

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PIERRE BRAZEAU, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

CASSAVA SCIENCES, INC., REMI
BARBIER, ERIC J. SCHOEN, JAMES W.
KUPIEC, NADAV FRIEDMANN, and
MICHAEL MARSMAN,

Defendants.

WANDA NEWELL, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

CASSAVA SCIENCES, INC., REMI
BARBIER, and ERIC J. SCHOEN,

Defendants.

KATLYN K. REIN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

CASSAVA SCIENCES, INC., REMI
BARBIER, ERIC J. SCHOEN, JAMES W.
KUPIEC, NADAV FRIEDMANN, and
MICHAEL MARSMAN,

Defendants.

Case No. 1:21-cv-00751

CLASS ACTION

Case No. 1:21-cv-00760

CLASS ACTION

Case No. 1:21-cv-00856

CLASS ACTION

**DECLARATION OF B. RUSSELL HORTON IN SUPPORT OF THE MOTION OF
THIBAULT MAGNIN FOR CONSOLIDATION, APPOINTMENT AS LEAD
PLAINTIFF, AND APPROVAL OF HIS SELECTION OF COUNSEL**

I, B. Russell Horton, declare under penalty of perjury, as follows:

1. I am a partner in the firm George Brothers Kincaid & Horton, L.L.P., liaison counsel for Thibault Magnin (“Magnin”). I submit this declaration in support of Magnin’s motion for an order (1) consolidating of the above-captioned actions; (2) appointing Magnin as Lead Plaintiff; and (3) approving his selection of Berman Tabacco as Lead Counsel and George Brothers Kincaid & Horton, L.L.P. as Liaison Counsel for the class. The statements made herein are made of my own personal knowledge and, if called upon, I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the notice published through *Business Wire*, a national business-oriented wire service, by Robbins Geller Rudman & Dowd LLP, on August 27, 2021.

3. In accordance with Section 21D(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(2), a true and correct copy of the certification of Magnin pursuant to the Private Securities Litigation Reform Act of 1995 is attached hereto as **Exhibit B**. A table showing Magnin’s trading between September 14, 2020 and August 27, 2021, inclusive (the “Class Period”), is included as Exhibit A to the certification.

4. A true and correct copy of a chart, prepared by counsel, summarizing Magnin’s financial losses in Cassava Sciences, Inc. common stock during the Class Period is attached as **Exhibit C** hereto.

5. A true and correct copy of Berman Tabacco’s firm resume is attached as **Exhibit D** hereto.

6. A true and correct copy of George Brothers Kincaid & Horton, L.L.P. firm biography is attached as **Exhibit E** hereto.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of October, 2021 in Austin, Texas.

/s/ B. Russell Horton
B. Russell Horton

CERTIFICATE OF SERVICE

I certify that on October 26, 2021, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ B. Russell Horton

B. Russell Horton

EXHIBIT A

SAVA NOTICE: Robbins Geller Rudman & Dowd LLP Files Class Action Suit Against Cassava Sciences, Inc. and Announces Opportunity for Investors with Substantial Losses to Lead Case

NEWS PROVIDED BY

Robbins Geller Rudman & Dowd LLP →

Aug 27, 2021, 15:16 ET

SAN DIEGO, Aug. 27, 2021 /PRNewswire/ -- **Robbins Geller Rudman & Dowd LLP** today announced that it filed a class action lawsuit charging Cassava Sciences, Inc. (NASDAQ: SAVA) and certain of its executives with violations of the Securities Exchange Act of 1934 and seeking to represent purchasers of Cassava Sciences common stock between February 2, 2021 and August 24, 2021, inclusive (the "Class Period"). The *Cassava Sciences* class action lawsuit was commenced on August 27, 2021 in the Western District of Texas and is captioned *Brazeau v. Cassava Sciences, Inc.*

If you wish to serve as lead plaintiff of the *Cassava Sciences* class action lawsuit, please provide your information by clicking here. You can also contact attorney Mary K. Blasy of Robbins Geller by calling 800/449-4900 or via e-mail at mblasy@rgrdlaw.com. Lead plaintiff motions for the *Cassava Sciences* class action lawsuit must be filed with the court no later than October 26, 2021.

The plaintiff is represented by Robbins Geller, which has **extensive experience** in prosecuting investor class actions including actions involving financial fraud. You can view a copy of the complaint by [clicking here](#).

CASE ALLEGATIONS: Cassava Sciences' lead therapeutic product candidate during the Class Period was simufilam, a small molecule drug designed to treat Alzheimer's disease. On February 2, 2021, Cassava Sciences

announced results from its interim analysis of an open-label study of simufilam, which purportedly demonstrated that patients' cognition and behavior scores both improved following six months of simufilam treatment, with no safety issues. As the market digested this ostensibly great news, the market price of Cassava Sciences common stock increased and Cassava Sciences immediately cashed in on the stock price inflation, issuing and selling more than four million shares of its common stock at \$49 per share on February 12, 2021 through an underwritten follow-on public stock offering and reaping more than \$200 million in gross proceeds.

The Cassava Sciences class action lawsuit alleges that, throughout the Class Period, defendants made false and misleading statements and failed to disclose that: (i) the quality and integrity of the scientific data supporting Cassava Sciences' claims for simufilam's efficacy had been overstated; (ii) the scientific data supporting Cassava Sciences' claims for simufilam's efficacy were biased; and (iii) as a result, defendants' positive statements during the Class Period about Cassava Sciences' business metrics and financial prospects and the likelihood of U.S. Food Drug Administration ("FDA") approval were false and misleading and/or lacked a reasonable basis.

On August 24, 2021, it was disclosed that the FDA had received a so-called Citizen Petition commencing an administrative action to "halt two ongoing trials of the drug [s]imufilam . . . pending a thorough audit by the FDA." As detailed in the Citizen Petition, "[i]nformation available to the petitioner . . . raises grave concerns about the quality and integrity of the laboratory-based studies surrounding this drug candidate and supporting the claims for its efficacy." After summarizing its findings, the Citizen Petition went on to conclude that "the extensive evidence set forth in the enclosed report, which presents grave concerns about the quality and integrity of the scientific data supporting Cassava [Sciences'] claims for [simufilam]'s efficacy, provides compelling grounds for pausing the ongoing clinical trials until the FDA can conduct and complete a rigorous audit of Cassava [Sciences'] research." On this news, the price of Cassava Sciences common stock fell approximately 32%, damaging investors.

THE LEAD PLAINTIFF PROCESS: The Private Securities Litigation Reform Act of 1995 permits any investor who purchased Cassava Sciences common stock during the Class Period to seek appointment as lead plaintiff in the Cassava Sciences class action lawsuit. A lead plaintiff is generally the movant with the greatest financial interest in the relief sought by the putative class who is also typical and adequate of the putative class. A lead

plaintiff acts on behalf of all other class members in directing the *Cassava Sciences* class action lawsuit. The lead plaintiff can select a law firm of its choice to litigate the *Cassava Sciences* class action lawsuit. An investor's ability to share in any potential future recovery of the *Cassava Sciences* class action lawsuit is not dependent upon serving as lead plaintiff.

ABOUT ROBBINS GELLER RUDMAN & DOWD LLP: With 200 lawyers in 9 offices nationwide, Robbins Geller Rudman & Dowd LLP is the largest U.S. law firm representing investors in securities class actions. Robbins Geller attorneys have obtained many of the largest shareholder recoveries in history, including the largest securities class action recovery ever – \$7.2 billion – in *In re Enron Corp. Sec. Litig.* The 2020 ISS Securities Class Action Services Top 50 Report ranked Robbins Geller first for recovering \$1.6 billion for investors last year, more than double the amount recovered by any other securities plaintiffs' firm. Please visit <http://www.rgrdlaw.com> for more information.

Attorney advertising.

Past results do not guarantee future outcomes.

Services may be performed by attorneys in any of our offices.

Contact:

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<https://www.linkedin.com/company/rgrdlaw>

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EXHIBIT B

CERTIFICATION PURSUANT TO FEDERAL SECURITIES LAW

I, Thibault Magnin, hereby certify that the following is true and correct to the best of my knowledge, information and belief:

1. I have reviewed a class action complaint filed in this matter against Cassava Sciences, Inc. ("Cassava").

2. I have authorized Berman Tabacco to file a motion for appointment as lead plaintiff and appointment of counsel on my behalf in this litigation.

3. I did not engage in transactions in the securities that are the subject of this action at the direction of counsel or in order to participate in this or any other litigation under the federal securities laws of the United States.

4. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition or trial, as necessary. I fully understand the duties and responsibilities of the lead plaintiff under the Private Securities Litigation Reform Act, including the selection and retention of counsel and overseeing the prosecution of the action for the Class. I will endeavor to provide fair and adequate representation and work directly with the efforts of class counsel to ensure the largest recovery for the Class.

5. My transactions in the securities of Cassava that are the subject of this action are set forth in Exhibit A, attached hereto.

6. During the three-year period preceding the date of this certification, I have not sought to serve, nor ever been appointed as a lead plaintiff or a representative party on behalf of a class under the federal securities laws.

7. I will not accept any payment for serving as representative party on behalf of the class beyond my *pro rata* share of any recovery, except for any award, as ordered or approved by the Court in compliance with federal law, directly relating to the representation of the class.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Thibault Magnin (Oct 1, 2021 11:50 GMT+2)

Thibault Magnin

Cassava Sciences Inc.**Cusip (14817C107)****Exhibit A****Class Period:** 09/14/20-08/27/21**Shareholder:** Thibault Magnin

Trade Date	Trans.	No. Bought	No. Sold	Trade Price
08/12/21	Buy	5		\$117.0000
08/12/21	Buy	15		\$124.8900
08/12/21	Buy	30		\$125.2799
08/12/21	Buy	50		\$117.5325
08/12/21	Buy	55		\$124.2900
08/12/21	Buy	430		\$124.8787
08/12/21	Buy	530		\$117.1906
08/12/21	Buy	900		\$116.4300
08/12/21	Buy	2,300		\$122.1218
08/12/21	Buy	4,500		\$122.1428
08/12/21	Buy	5,000		\$122.2821
08/25/21	Sell		(4,500)	\$86.3930
08/25/21	Sell		(4,500)	\$86.1490
08/25/21	Sell		(4,815)	\$86.8965

EXHIBIT C

Cassava Sciences Inc.**Cusip (14817C107)****Loss Analysis****Class Period:** 09/14/20-08/27/21**Shareholder:** Monsieur Thibault Magnin

Trade Date	Trans.	No. Bought	No. Sold	No. Remaining	Trade Price	(Cost)	Proceeds
08/12/21	Buy	5		5	\$117.0000	(\$585.00)	\$0.00
08/12/21	Buy	15		20	\$124.8900	(\$1,873.35)	\$0.00
08/12/21	Buy	30		50	\$125.2799	(\$3,758.40)	\$0.00
08/12/21	Buy	50		100	\$117.5325	(\$5,876.63)	\$0.00
08/12/21	Buy	55		155	\$124.2900	(\$6,835.95)	\$0.00
08/12/21	Buy	430		585	\$124.8787	(\$53,697.84)	\$0.00
08/12/21	Buy	530		1,115	\$117.1906	(\$62,111.03)	\$0.00
08/12/21	Buy	900		2,015	\$116.4300	(\$104,787.00)	\$0.00
08/12/21	Buy	2,300		4,315	\$122.1218	(\$280,880.09)	\$0.00
08/12/21	Buy	4,500		8,815	\$122.1428	(\$549,642.69)	\$0.00
08/12/21	Buy	5,000		13,815	\$122.2821	(\$611,410.25)	\$0.00
08/25/21	Sell		(4,500)	9,315	\$86.3930	\$0.00	\$388,768.55
08/25/21	Sell		(4,500)	4,815	\$86.1490	\$0.00	\$387,670.68
08/25/21	Sell		(4,815)	0	\$86.8965	\$0.00	\$418,406.50
Totals:		13,815	(13,815)			(\$1,681,458)	\$1,194,846
Shares Held:			0				
Total Loss:			(\$486,612)				

EXHIBIT D

THE FIRM

Berman Tabacco is a national law firm with 35 attorneys located in offices in Boston and San Francisco. Since its founding in 1982, the firm has devoted its practice to complex litigation, primarily representing plaintiffs seeking redress under U.S. federal and state securities, antitrust and consumer laws.

Over the past almost four decades, Berman Tabacco's attorneys have prosecuted hundreds of class actions, recovering billions of dollars on behalf of the firm's clients and the classes they represented. In addition to financial recoveries, the firm has achieved significant changes in corporate governance and business practices of defendant companies. Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time* (as of 12/31/2020).¹ According to ISS Securities Class Action Services' "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.² SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012). The firm currently holds leadership positions in securities, antitrust and consumer cases around the country.

Berman Tabacco is rated AV Preeminent® by *Martindale-Hubbell*®. *Benchmark Litigation* ranked the firm as a *Top Ten Plaintiffs' Firm* for its work "on behalf of individuals and institutions who have suffered financial harm due to violations of securities or antitrust laws" for the sixth consecutive year (2017-2022). *Benchmark Litigation* also ranked the firm as *Highly Recommended* in 2021 – the eleventh consecutive time the firm has received that distinction.³ *The Legal 500* also ranked the firm as *recommended* in securities litigation in its 2017-2021 U.S. editions (as well as ranking three of the firm's attorneys in the same category in 2020-2021, seven in 2017-2018 and six attorneys in 2019) and as *recommended* in antitrust litigation in its 2019-2021 U.S. editions (as well as ranking three of the firm's attorneys in that category in 2021 and four in 2019-2020), noting in 2019 that the firm is known for its "soup-to-nuts excellence, from legal analysis through to trial preparation and trial," and that clients had noted that the firm makes a "very comprehensive effort, with no stone left unturned." In 2020, *The Legal 500* reported client praise for Berman including that the firm has "[a]n excellent team from top to bottom. It provides superb responsiveness and is able to dig in hard at a moment's notice." And further that, the team is "always prepared and [has] deep knowledge of the issue. It is a pleasure to observe a team that so well coordinated." Additionally, *Chambers USA* recognized the firm in its *Securities Litigation – Mainly Plaintiff* category in 2021 in both its *USA Nationwide* and *California* editions. The firm was previously recognized by *Chambers USA* in the same category in 2017 and 2018 in its *USA Nationwide* edition. Berman Tabacco was also recognized in both securities and antitrust litigation by *U.S. News & World Report—Best Lawyers* in the Eleventh Edition of the *Best Law Firms* rankings

¹ *Top 100 U.S. Class Action Settlements of All Time as of December 31, 2020*, pp. 13, 16-17 (ISS SCAS 2021), <http://www.bermantabacco.com/wp-content/uploads/2021/02/SCAS-Top-100-US-Settlements-of-All-Time-as-of-2020-12-31.pdf>.

² ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015*, at p. 4 (May 2016), <https://www.bermantabacco.com/wp-content/uploads/2018/05/scastop502015.pdf>.

³ See <https://www.benchmarklitigation.com/Firm/Berman-Tabacco-California/Profile/109234#review>.

(2021 ed.) and was previously recognized in antitrust (2019-2020) and securities (2020) litigation. Berman Tabacco's lawyers are frequently singled out for favorable comments by our clients, presiding judges and opposing counsel.

SECURITIES PRACTICE

Berman Tabacco has almost 40 years of experience in securities litigation and has represented public pension funds and other institutional investors in this area since 1998. As reported by Cornerstone Research, the firm has successfully prosecuted some of the most significant shareholder class action lawsuits.⁴ Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time (as of 12/31/2020)*.⁵ According to ISS Securities Class Action Services "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.⁶ SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012).

Specifically, the firm has been appointed lead or co-lead counsel in more than 100 actions, recovering billions of dollars on behalf of defrauded investors and the classes they represent under the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The firm has an extremely rigorous case-evaluation process and highly experienced litigation attorneys. Its dismissal rate for cases brought under the PSLRA is less than half the overall dismissal rate for such cases according to one authoritative study.⁷

Berman Tabacco serves as monitoring, evaluation and/or litigation counsel to nearly 100 institutional investors, including statewide public employee retirement systems in more than 17 states, 15 public funds with more than \$50 billion in assets, six of the 10 largest public pension plans in the country and 10 of the

⁴ Cornerstone Research, *Securities Class Action Filings: 2011 Year in Review* (2012), at p. 23, available at <http://securities.stanford.edu/research-reports/1996-2011/Cornerstone-Research-Securities-Class-Action-Filings-2011-YIR.pdf>.

⁵ *Top 100 U.S. Class Action Settlements of All Time as of December 31, 2020*, pp. 13, 16-17 (ISS SCAS 2021), <http://www.bermantabacco.com/wp-content/uploads/2021/02/SCAS-Top-100-US-Settlements-of-All-Time-as-of-2020-12-31.pdf>.

⁶ ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015*, at p. 4 (May 2016), <https://www.bermantabacco.com/wp-content/uploads/2018/05/scastop502015.pdf>.

⁷ Firm data reflects dismissal rates through present. Overall dismissal rates come from See *Securities Class Action Filings: 2020 Year in Review*, pp. 18, 34 (Cornerstone Research 2021), <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2020-Year-in-Review.pdf>.

largest 20.⁸ For many institutional investors, the firm's services include electronically monitoring the client's portfolio for losses due to securities fraud in U.S. securities cases.

The firm provides portfolio monitoring, case evaluation and litigation services to its institutional clients, including the litigation of class and individual claims pursuant to U.S. federal and state securities laws, as well as derivative cases pursuant to state law. The firm also offers institutional investors legal services in other areas, including (a) representing institutional investors in general commercial litigation; (b) representing institutional investors in their capacity as defendants in constructive fraudulent transfer cases; (c) negotiating resolution of disputes with money managers and custodians; and (d) pursuing shareholder rights, such as books and records demands and merger and acquisition cases.

RESULTS

SECURITIES SETTLEMENTS

Examples of the firm's settlements include:

Carlson v. Xerox Corp., No. 00-cv-1621 (D. Conn.). Representing the Louisiana State Employees' Retirement System as co-lead counsel, Berman Tabacco negotiated a \$750 million settlement to resolve claims of securities fraud against Xerox, certain top officers and its auditor KPMG LLP. When it received final court approval in January 2009, the recovery was the 10th largest securities class action settlement of all time. The judge praised plaintiffs' counsel for obtaining "a very large settlement" despite vigorous opposition in a case complicated by an alleged fraud that "involved multiple accounting standards that touched on numerous aspects of a multinational corporation's business, implicated operating units around the world, and spanned five annual reporting periods. ... [and] the rudiments of the accounting principles at issue in the case were complex, as were numerous other aspects of the case. ... The class received high-quality legal representation and obtained a very large settlement in the face of vigorous opposition by highly experienced and skilled defense counsel."

In re IndyMac Mortgage-Backed Litigation, No. 09-cv-4583 (S.D.N.Y.). Representing the Wyoming State Treasurer's Office and the Wyoming Retirement System as lead plaintiffs, Berman Tabacco achieved settlements totaling \$346 million in a case regarding the securitization and sale of mortgage-backed securities ("MBS") by IndyMac Bank and related entities. In February 2015, the court approved a \$340 million settlement with six underwriters of IndyMac MBS offerings, adding to a previous \$6 million partial settlement and making the total recovery one of the largest MBS class action settlements to date. This settlement is extraordinary, not only because of its size but also because \$340 million of the settlement amount was paid entirely by underwriters who had due diligence defenses. In most other MBS cases, by contrast, plaintiffs were able to recover the settlement fund monies from the issuing entities, who are held to

⁸ Based on a January 2020 query of the Standard & Poor's *Money Market Directories*, www.mmdwebaccess.com, whereby public pension funds were ranked according to defined benefit assets under management. Actual valuation dates vary.

a strict liability standard for which there is no due diligence defense. (The issuer in this action, IndyMac Bank, is no longer in existence.)

In re Bristol-Myers Squibb Securities Litigation, No. 02-cv-2251 (S.D.N.Y.). Berman Tabacco represented the Fresno County Employees' Retirement Association and Louisiana State Employees' Retirement System as co-lead plaintiffs and negotiated a settlement of \$300 million in July 2004. At that time, the settlement was the largest by a drug company in a U.S. securities fraud case.

In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation, Master File No. 08-MDL No. 1963/08 Civ. 2793 (S.D.N.Y.). Berman Tabacco acted as co-lead counsel for court-appointed lead plaintiff the State of Michigan Retirement Systems in this case arising from investment losses suffered in the Bear Stearns Companies' 2008 collapse. The firm negotiated \$294.9 million in settlements, comprised of \$275 million from Bear Stearns and \$19.9 million from auditor Deloitte & Touche LLP. The settlement received final approval November 9, 2012. At the time, the settlement for \$294.9 million represented one of the 40 largest securities class action settlements under the PSLRA. This is particularly significant in light of the fact that no government entity had pursued actions or claims against Bear Stearns or its former officers and directors related to the same conduct complained of in the firm's action.

In re El Paso Securities Litigation, No. H-02-2717 (S.D. Tex.). Representing the Oklahoma Firefighters Pension and Retirement System as co-lead plaintiff, Berman Tabacco helped negotiate a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. The court granted final approval of the settlement in March 2007.

California Public Employees' Retirement System v. Moody's Corp., No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). As sole counsel representing the California Public Employees' Retirement System (CalPERS), the firm obtained a combined \$255 million settlement with the credit rating agencies Moody's and Standard & Poor's to settle CalPERS' claim that "Aaa" ratings on three structured investment vehicles were negligent misrepresentations under California law. In addition to achieving a substantial recovery for investment losses, this case was groundbreaking in that (a) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages, and (b) it resulted in a published appellate court opinion finding that rating agencies can, in certain circumstances, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

In re Centennial Technologies Securities Litigation, No. 97-cv-10304 (D. Mass.). Berman Tabacco served as sole lead counsel in a class action involving a massive accounting scandal that shot down the company's high-flying stock. Berman Tabacco negotiated a settlement that permitted a turnaround of the company and provided a substantial recovery for class members. The firm negotiated changes in corporate practice, including strengthening internal financial controls and obtaining 37% of the company's stock for the class. The firm also recovered \$20 million from Coopers & Lybrand, Centennial's auditor at the time. In addition, the firm recovered \$2.1 million from defendants Jay Alix & Associates and Lawrence J. Ramaekers for a total recovery of more than \$35 million for the class. The firm subsequently obtained a \$207 million judgment against former Centennial CEO Emanuel Pinez.

In re Digital Lightwave Securities Litigation, No. 98-152-cv-T-24C (M.D. Fla.). As co-lead counsel, Berman Tabacco negotiated a settlement that included changing company management and strengthening the

company's internal financial controls. The class received 1.8 million shares of freely tradable common stock that traded at just below \$4 per share when the court approved the settlement. At the time the shares were distributed to the members of the class, the stock traded at approximately \$100 per share and class members received more than 200% of their losses after the payment of attorneys' fees and expenses. The total value of the settlement, at the time of distribution, was almost \$200 million.

In re Lernout & Hauspie Securities Litigation, No. 00-11589 (D. Mass.), and *Quaak v. Dexia, S.A.*, No. 03-11566 (D. Mass.). In December 2004, as co-lead counsel, Berman Tabacco negotiated what was then the third-largest settlement ever paid by accounting firms in a securities class action – a \$115 million agreement with the U.S. and Belgian affiliates of KPMG International. The case stemmed from KPMG's work for Lernout & Hauspie Speech Products, a software company driven into bankruptcy by a massive fraud. In March 2005, the firm reached an additional settlement worth \$5.27 million with certain of Lernout & Hauspie's former top officers and directors. In the related *Quaak* case, the firm negotiated a \$60 million settlement with Dexia Bank Belgium to settle claims stemming from the bank's alleged role in the fraudulent scheme at Lernout & Hauspie. The court granted final approval of the Dexia settlement in June 2007, bringing the total settlement value to more than \$180 million.

In re BP PLC Securities Litigation, No. 10-md-2185 (S.D. Tex.). The firm was co-lead counsel representing co-lead plaintiff Ohio Public Employees Retirement System. Lead plaintiffs reached a \$175 million settlement to resolve claims brought on behalf of a class of investors who purchased BP's American Depositary Shares ("ADS") between April 26, 2010 and May 28, 2010. The action alleged that BP and two of its former officers made false and misleading statements regarding the severity of the Gulf of Mexico oil spill. More specifically, plaintiffs alleged that BP misrepresented that its best estimate of the oil spill flow rate was from 1,000 to 5,000 barrels of oil per day, when internal BP estimates showed substantially higher potential flow rates. On February 13, 2017, the court granted final approval of the settlement, ending more than six years of hard fought litigation that included extensive fact and expert discovery, multiple rounds of briefing on defendants' motions to dismiss, two rounds of briefing on class certification, a successful defense of BP's appeal of the district court's class certification decision and briefing on cross-motions for summary judgment. This settlement reportedly represents one of only four mega securities class action settlements (settlements of \$100 million or more) in 2017. See *Securities Class Action Settlements—2017 Review and Analysis*, p. 4 (Cornerstone Research 2018),

<https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2017-Review-and-Analysis>. It was also listed as the highest valued settlement during the first half of 2017 by ISS Securities Class Action Services. See ISS Securities Class Action Services, *Top 100 U.S. Class Action Settlements of All Time as of Dec. 31, 2017* (2018), p. 2, available at <https://www.bermantabacco.com/wp-content/uploads/2018/03/SCAS-Top-100-Settlements-of-All-Time-2017-12-31.pdf>.

In re Fannie Mae 2008 Securities Litigation, No. 08-cv-7831 (S.D.N.Y.). As co-lead counsel representing the Massachusetts Pension Reserves Investment Management Board, a co-lead plaintiff for the common stock class, Berman Tabacco helped negotiate a \$170 million settlement with Fannie Mae. To achieve the settlement, which was approved in March 2015, plaintiffs had to overcome the challenges posed by the federal government's placement of Fannie Mae into conservatorship and by the Second Circuit's upholding of dismissal of similar claims against Freddie Mac, Fannie Mae's sibling Government-Sponsored Enterprise.

In re Symbol Technologies, Inc. Securities Litigation, No. 2:02-cv-01383 (E.D.N.Y.). Berman Tabacco represented the Louisiana Municipal Police Employees' Retirement System as co-lead plaintiff, obtaining a \$139 million partial settlement in June 2004. Subsequently, Symbol's former auditor, Deloitte & Touche LLP, agreed to pay \$24 million, bringing the total settlement to \$163 million. The court granted final approval in September 2006.

In re Prison Realty Securities Litigation, No. 3:99-cv-0452 (M.D. Tenn.) (*In re Old CCA Securities Litigation*, No. 3:99-cv-0458). The firm represented the former shareholders of Corrections Corporation of America, which merged with another company to form Prison Realty Trust, Inc. The action charged that the registration statement issued in connection with the merger contained untrue statements. Overcoming arguments that the class' claims of securities fraud were released in prior litigation involving the merger, the firm successfully defeated the motions to dismiss. It subsequently negotiated a global settlement of approximately \$120 million in cash and stock for this case and other related litigation.

Oracle Cases, Coordination Proceeding, Special Title (Rule 1550(b)) No. 4180 (Cal. Super. Ct. San Mateo Cty.). In this coordinated derivative action, Oracle Corporation shareholders alleged that the company's Chief Executive Officer, Lawrence J. Ellison, profited from illegal insider trading. Acting as co-lead counsel, the firm reached a settlement, pursuant to which Mr. Ellison would personally make charitable donations of \$100 million over five years in Oracle's name to an institution or charity approved by the company and pay \$22 million in attorneys' fees and expenses associated with the prosecution of the case. The innovative agreement, approved by a judge in December 2005, benefited Oracle through increased goodwill and brand recognition, while minimizing concerns that would have been raised by a payment from Mr. Ellison to the company, given his significant ownership stake. The lawsuit resulted in important changes to Oracle's internal trading policies that decrease the chances that an insider will be able to trade in possession of material, non-public information.

In re International Rectifier Securities Litigation, No. 07-cv-2544 (C.D. Cal.). As co-lead counsel representing the Massachusetts Laborers' Pension Fund, the firm negotiated a \$90 million settlement with International Rectifier Corporation and certain top officers and directors. The case alleged that the company engaged in numerous accounting improprieties to inflate its financial results. The court granted final approval of the settlement in February 2010. At the settlement approval hearing, the Honorable John F. Walter, the presiding judge, praised counsel, stating: "I think the work by the lawyers – all the lawyers in this case – was excellent. ... In this case, the papers were excellent. So it makes our job easier and, quite frankly, more interesting when I have lawyers with the skill of the lawyers that are present in the courtroom today who have worked on this case ... the motion practice in this case was, quite frankly, very intellectually challenging and well done. ... I've presided over this consolidated action since its commencement and have nothing but the highest respect for the professionalism of the attorneys involved in this case. ... The fact that plaintiffs' counsel were able to successfully prosecute this action against such formidable opponents is an impressive feat."

In re State Street Bank & Trust Co. ERISA Litigation, No. 07-cv-8488 (S.D.N.Y.). The firm acted as co-lead counsel in this consolidated class action case, which alleged that defendant State Street Bank and Trust Company and its affiliate, State Street Global Advisors, Inc., (collectively, "State Street") breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by failing to prudently manage the assets of ERISA plans invested in State Street fixed income funds during 2007. After

well over a year of litigation, during which Berman Tabacco and its co-counsel reviewed approximately 13 million pages of documents and took more than 30 depositions, the parties negotiated an all-cash \$89.75 million settlement, which received final approval in 2010.

In re Philip Services Corp. Securities Litigation, No. 98-cv-0835 (S.D.N.Y.). As co-lead counsel, Berman Tabacco negotiated settlements totaling \$79.75 million with the bankrupt company's former auditors, top officers, directors and underwriters. The case alleged that Philip Services and its top officers and directors made false and misleading statements regarding the company's publicly reported revenues, earnings, assets and liabilities. The district court initially dismissed the claims on grounds of *forum non conveniens*, but the firm successfully obtained a reversal by the United States Court of Appeals for the Second Circuit. The court granted final approval of the settlements in March 2007.

In re Reliant Securities Litigation, No. 02-cv-1810 (S.D. Tex.). As lead counsel representing the Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$75 million cash settlement from the company and Deloitte & Touche LLP. The settlement received final approval in January 2006.

In re KLA-Tencor Corp. Securities Litigation, No. 06-cv-04065 (N.D. Cal.). Representing co-lead plaintiff Louisiana Municipal Police Employees' Retirement System, Berman Tabacco negotiated a \$65 million agreement to settle claims that KLA-Tencor illegally backdated stock option grants, issued false and misleading statements regarding grants to key executives and inflated the company's financial results by understating expenses associated with the backdated options. The court granted final approval of the settlement in 2008. At the conclusion of the case, Judge Charles R. Breyer praised plaintiffs' counsel for "working very hard" in exchange for an "extraordinarily reasonable" fee, stating: "I appreciate the fact that you've done an outstanding job, and you've been entirely reasonable in what you've done. Congratulations for working very hard on this."

City of Brockton Retirement System v. Avon Products Inc., No. 11-cv-04665 (S.D.N.Y.). As a member of the executive committee representing named plaintiffs City of Brockton Retirement System and Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$62 million settlement. The action alleged that Avon Products, Inc. violated federal securities laws by failing to disclose to investors the size and scope of the Company's violations of the Foreign Corrupt Practices Act of 1977 ("FCPA"). In response to Avon's piecemeal disclosures over the course of more than a year, which ultimately revealed the true extent of the FCPA violations, the company's stock lost nearly 20% of its pre-disclosure value. This case was one of the very few successful securities cases premised on FCPA violations.

Ehrenreich v. Witter, No. 95-cv-6637 (S.D. Fla.). The firm was co-lead counsel in this case involving Sensormatic Electronics Corp., which resulted in a settlement of \$53.5 million. When it was approved in 1998, the settlement was one of the largest class action settlements in the state of Florida.

In re Thomas & Betts Securities Litigation, No. 2:00-cv-2127 (W.D. Tenn.). The firm served as co-lead counsel in this class action, which settled for more than \$51 million in 2004. Plaintiffs had accused the company and other defendants of issuing false and misleading financial statements for 1996, 1997, 1998, 1999 and the first two quarters of 2000.

In re Enterasys Networks, Inc. Securities Litigation, No. C-02-071-M (D.N.H.). Berman Tabacco acted as sole lead counsel in a case against Enterasys Networks, Inc., in which the Los Angeles County Employees Retirement Association was lead plaintiff. The company settled in October 2003 for \$17 million in cash, stock valued at \$33 million and major corporate governance improvements that opened the computer networking company to greater public scrutiny. Changes included requiring the company to back a proposal to eliminate its staggered board of directors, allowing certain large shareholders to propose candidates to the board and expanding the company's annual proxy disclosures. The settlement received final court approval in December 2003.

Giarraputo v. UNUMProvident Corp., No. 2:99-cv-00301 (D. Me.). As a member of the executive committee representing plaintiffs, Berman Tabacco secured a \$45 million settlement in a lawsuit stemming from the 1999 merger that created UNUMProvident. Shareholders of both predecessor companies accused the insurer of misleading the public about its business condition before the merger. The settlement received final approval in June 2002.

In re General Electric Co. Securities Litigation, No. 09 Civ. 1951 (S.D.N.Y.). The firm served as Lead Counsel on behalf of the State Universities Retirement System of Illinois in a lawsuit against General Electric Co. and certain of its officers. A settlement in the amount of \$40 million was reached with all the parties. The court approved the settlement on September 6, 2013.

In re UCAR International, Inc. Securities Litigation, No. 98-cv-0600 (D. Conn.). The firm represented the Florida State Board of Administration as the lead plaintiff in a securities claim arising from an accounting restatement. The case settled for \$40 million cash and the requirement that UCAR appoint an independent director to its board of directors. The settlement was approved in 2000.

In re American Home Mortgage Securities Litigation, No. 07-MD-1898 (E.D.N.Y.). As co-lead counsel representing the Oklahoma Police Pension & Retirement System, the firm negotiated a \$37.25 million settlement – including \$4.75 million from auditors Deloitte & Touche and \$8.5 million from underwriters – despite the difficulties American Home's bankruptcy posed to asset recovery. The plaintiffs contended that American Home had failed to write down the value of certain loans in its portfolio, which declined substantially in value as the credit markets unraveled. The settlement received final approval in 2010 and was distributed in 2011.

In re Avant, Securities Litigation, No. 96-cv-20132 (N.D. Cal.). Avant!, a software company, was charged with securities fraud in connection with its alleged theft of a competitor's software code, which Avant! incorporated into its flagship software product. Serving as lead counsel, the firm recovered \$35 million for the class. The recovery resulted in eligible class claimants receiving almost 50% of their losses after attorneys' fees and expenses.

In re SmartForce PLC d/b/a SkillSoft Securities Litigation, No. 02-cv-544 (D.N.H.). Representing the Teachers' Retirement System of Louisiana as co-lead plaintiff, Berman Tabacco negotiated a \$30.5 million partial settlement with SkillSoft. Subsequently, the firm also negotiated an \$8 million cash settlement with Ernst & Young Chartered Accountants and Ernst & Young LLP, SkillSoft's auditors at the time. The settlements received final approval in September 2004 and November 2005, respectively.

In re Sykes Enterprises, Inc. Securities Litigation, No. 8:00-cv-212-T-26F (M.D. Fla.). The firm represented the Florida State Board of Administration as co-lead plaintiff. Sykes Enterprises was accused of using improper means to match the company's earnings with Wall Street's expectations. The firm negotiated a \$30 million settlement.

In re Valence Securities Litigation, No. 95-cv-20459 (N.D. Cal.). Berman Tabacco served as co-lead counsel in this action against a Silicon Valley-based company for overstating its performance and the development of an allegedly revolutionary battery technology. After the Ninth Circuit reversed the district court's decision to grant summary judgment in favor of defendants, the case settled for \$30 million in Valence common stock.

In re Sybase II, Securities Litigation, No. 98-cv-0252-CAL (N.D. Cal.). Sybase was charged with inflating its quarterly financial results by improperly recognizing revenue at its wholly owned subsidiary in Japan. Acting as co-lead counsel, the firm obtained a \$28.5 million settlement.

In re Force Protection Inc. Securities Litigation, No. 08-cv-845 (D.S.C.). As co-lead counsel representing the Laborers' Annuity and Benefit System of Chicago, the firm negotiated a \$24 million settlement in a securities class action against armored vehicle manufacturer Force Protection, Inc. The settlement addressed the claims of shareholders who accused the company and its top officers of making false and misleading statements regarding financial results, failing to maintain effective internal controls over financial reporting and failing to comply with government contracting standards.

In re Zynga Inc. Securities Litigation, No. 12-cv-04007 (N.D. Cal.). As co-lead counsel, the firm negotiated a \$23 million recovery to settle claims against the company and certain of its officers. The case alleged that the company and its highest-level officers falsely touted accelerated bookings and aggressive growth through 2012, while concealing crucial information that Zynga was experiencing significant declines in bookings for its games and upcoming Facebook platform changes that would negatively impact Zynga's bookings. Then, while Zynga's stock was trading at near a class-period high, defendants obtained an early release from the IPO lock-up on their shares to enable them and a few other insiders to reap over \$593 million in proceeds in a secondary offering of personally held shares. The secondary offering was timed just three months before Zynga announced its dismal Q2 2012 earnings at the end of the class period, which caused Zynga's stock to plummet. The court granted final approval of the settlement in February 2016.

In re ICG Communications Inc. Securities Litigation, No. 00-cv-1864 (D. Colo.). As co-lead counsel representing the Strategic Marketing Analysis Fund, the firm negotiated an \$18 million settlement with ICG Communications Inc. The case alleged that ICG executives misled investors and misrepresented growth, revenues and network capabilities. The court granted final approval of the settlement in January 2007.

In re Critical Path, Inc. Securities Litigation, No. 01-cv-0551 (N.D. Cal.). The firm negotiated a \$17.5 million recovery to settle claims of accounting improprieties at a California software development company. Representing the Florida State Board of Administration, the firm was able to obtain this recovery despite difficulties arising from the fact that Critical Path teetered on the edge of bankruptcy. The settlement was approved in June 2002.

In re Sunrise Senior Living, Inc. Securities Litigation, No. 07-cv-00102 (D.D.C.). A federal judge granted final approval of a \$13.5 million settlement between Oklahoma Firefighters Pension and Retirement System, represented by Berman Tabacco, and Sunrise Senior Living Inc.

Hallet v. Li & Fung, Ltd., No. 95-cv-08917 (S.D.N.Y.). Cyrk Inc. was charged with misrepresenting its financial results and failing to disclose that its largest customer was ending its relationship with the company. In 1998, Berman Tabacco successfully recovered more than \$13 million for defrauded investors.

In re Warnaco Group, Inc. Securities Litigation, No. 00-cv-6266 (S.D.N.Y.). Representing the Fresno County Employees' Retirement Association as co-lead plaintiff, the firm negotiated a \$12.85 million settlement with several current and former top officers of the company.

Gelfer v. Pegasystems, Inc., No. 98-cv-12527 (D. Mass.). As co-lead counsel, Berman Tabacco negotiated a settlement valued at \$12.5 million, \$4.5 million in cash and \$7.5 million in shares of the company's stock or cash, at the company's option.

Sand Point Partners, L.P. v. Pediatrix Medical Group, Inc., No. 99-cv-6181 (S.D. Fla.). Berman Tabacco represented the Florida State Board of Administration, which was appointed co-lead plaintiff along with several other public pension funds. The complaint accused Pediatrix of Medicaid billing fraud, claiming that the company illegally increased revenue and profit margins by improperly coding treatment rendered. The case settled for \$12 million on the eve of trial in 2002.

In re Molten Metal Technology Inc. Securities Litigation, No. 1:97-cv-10325 (D. Mass.), and *Axler v. Scientific Ecology Group, Inc.*, No. 1:98-cv-10161 (D. Mass.). As co-lead counsel, Berman Tabacco played a key role in settling the actions after Molten Metal and several affiliates filed a petition for bankruptcy reorganization in Massachusetts. The individual defendants and the insurance carriers in Molten Metal agreed to settle for \$11.91 million. After the bankruptcy, a trustee objected to the use of insurance proceeds for the settlement. The parties agreed to pay the trustee \$1.325 million of the Molten Metal settlement. The parties also agreed to settle claims against Scientific Ecology Group for \$1.25 million, giving Molten Metal's investors \$11.835 million.

In re CHS Electronics, Inc. Securities Litigation, No. 99-8186-CIV (S.D. Fla.). The firm helped obtain an \$11.5 million settlement for co-lead plaintiff Warburg, Dillon, Read, LLC (now UBS Warburg).

In re Summit Technology Securities Litigation, No. 96-cv-11589 (D. Mass.). Berman Tabacco, as co-lead counsel, negotiated a \$10 million settlement for the benefit of the class.

In re Exide Corp. Securities Litigation, No. 98-cv-60061 (E.D. Mich.). Exide was charged with having altered its inventory accounting system to artificially inflate profits by reselling used, outdated or unsuitable batteries as new ones. As co-lead counsel for the class, Berman Tabacco recovered more than \$10 million in cash for class members.

In re Fidelity/Micron Securities Litigation, No. 95-cv-12676 (D. Mass.). The firm recovered \$10 million in cash for Micron investors after a Fidelity Fund manager touted Micron while secretly selling the stock.

In re Par Pharmaceutical Securities Litigation, No. 06-cv-03226 (D.N.J.). As counsel for court-appointed plaintiff, the Louisiana Municipal Police Employees' Retirement System, Berman Tabacco obtained an \$8.1 million settlement from the company and its former CEO and CFO, which the court approved in January 2013. The case alleged that the company had misled investors about its accounting practices, including overstatement of revenues.

In re Interspeed, Inc. Securities Litigation, No. 00-cv-12090-EFH (D. Mass.). Berman Tabacco served as co-lead counsel and negotiated a \$7.5 million settlement on behalf of the class. The settlement was reached in an early stage of the proceedings, largely as a result of the financial condition of Interspeed and the need to salvage a recovery from its available assets and insurance.

In re Abercrombie & Fitch Co. Securities Litigation, No. M21-83 (S.D.N.Y.). As a member of the executive committee in this case, the firm recovered more than \$6 million on behalf of investors. The case alleged that the clothing company misled investors with respect to declining sales, which affected the company's financial condition. The court granted final approval of the settlement in January 2007.

In re Digital Domain Media Group, Inc. Securities Litigation, No. 12-14333-CIV (S.D. Fla.). As co-lead counsel, Berman Tabacco obtained a \$5.5 million settlement on behalf investors of Digital Domain Media Group, Inc. ("DDMG") that was approved by the both bankruptcy court and the Southern District of Florida. The lead plaintiffs alleged that DDMG, a digital production company that was forced to file for bankruptcy in September 2012, less than 10 months after its initial public offering ("IPO"), misled investors in documents filed with the U.S. Securities and Exchange Commission as part of the IPO and in other statements made throughout the class period. Among other things, the lawsuit alleged that the defendants misled the public about DDMG's ability to raise capital and fund its operations, falsely reassuring investors about the company's ability to meet operating expenses while it "burned" cash at a rate that threatened its viability. In fact, according to a September 18, 2012 article in the Palm Beach Post, DDMG had difficulties meeting payroll as far back as 2010. According to the same article, then-Chairman and CEO John C. Textor "himself predicted a 'train wreck' in an email to an investor in early 2010."

In re WorldCom, Inc. Securities Litigation, No. 02-cv-3288 (S.D.N.Y.). As counsel to court-appointed bondholder representatives, the County of Fresno, California and the Fresno County Employees' Retirement Association, Berman Tabacco helped a team of lawyers representing the lead plaintiff, the New York State Common Retirement Fund, obtain settlements worth more than \$6.13 billion.

Daccache, et al. v. Raymond James Financial, Inc., et al., No. 16-cv-21575 (S.D. Fla); *Shaw et al. v. Raymond James Financial, Inc., et al.*, No. 5:16-cv-00129-GWC (D. Vt. May 17, 2016). Berman Tabacco served on the Plaintiffs' Steering Committee in this RICO class action brought on behalf of investors in limited partnerships associated with the Jay Peak ski resort in Vermont. Plaintiffs, foreign nationals whose investments were made through the federal "EB-5 Immigrant Investor Program," alleged that over \$200 million in investor funds were misappropriated and/or otherwise misused in an elaborate, Ponzi-like scheme. Defendants' scheme was revealed in April 2016, when the SEC announced multiple securities fraud charges and an asset freeze against Jay Peak and related business entities, the resort's Florida-based owner and the resort's principal officer. Plaintiffs alleged that those individuals and entities, as well as certain financial institutions and their employees, devised and executed a complex money laundering scheme wherein investor funds were improperly transferred from escrow accounts to investment accounts

that were controlled by Jay Peak's owner and used for purposes other than those specified in the limited partnership documents. Among other things, plaintiffs alleged the improper commingling of investor funds and the misappropriation of more than \$50 million in investor funds by Jay Peak's owner for his personal use. Plaintiffs sought recovery under Florida's RICO Act and also asserted claims for common law fraud, breach of fiduciary duty, negligence, civil conspiracy, and breach of contract. On April 13, 2017, Defendant Raymond James & Associates, Inc. agreed to a \$150 million settlement, which was approved on June 30, 2017.

ANTITRUST PRACTICE

Berman Tabacco has a national reputation for our work prosecuting antitrust class actions involving price-fixing, market allocation agreements, patent misuse, monopolization and group boycotts among other types of anticompetitive conduct. Representing clients ranging from Fortune 500 companies and public pension funds to individual consumers, the experienced senior attorneys in our Antitrust Practice Group have engineered substantial settlements and changed business practices of defendant companies, recovering more than \$1 billion for our clients overall.

Berman Tabacco has played a major role in the prosecution of numerous landmark antitrust cases. For example, the firm was lead counsel in the Toys "R" Us litigation, which developed the antitrust laws with respect to "hub and spoke" conspiracies and resulted in a \$56 million settlement. Berman Tabacco brought the first action centered on so-called "reverse payments" between a brand name drug maker and a generic drug maker, resulting in an \$80 million settlement from the drug makers, which had been accused of keeping a generic version of their blood pressure medication off the market.

The firm's victories for victims of antitrust violations have come at the trial court level and also through landmark appellate court victories, which have contributed to shaping private enforcement of antitrust law. For example, in the Cardizem CD case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a *per se* unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

In the firm's case against diamond giant De Beers, the Third Circuit, sitting *en banc*, vacated an earlier panel decision and upheld the certification of a nationwide settlement class, removing the last obstacle to final approval of an historic \$295 million settlement. The Third Circuit's important decision provides a roadmap for obtaining settlement class certification in complex, nationwide class actions involving laws of numerous states.

In 2016, the firm won reversal of a grant of summary judgment for defendant automakers in a group boycott-conspiracy case involving the export of new motor vehicles from Canada to the U.S. The California Court of Appeal found that plaintiffs had presented evidence of "patently anticompetitive conduct" with evidence

gathered in the pre-trial phase, which was powerful enough to go to a jury. The ruling is a rare example of an appellate court analyzing and reversing a trial court's evidentiary rulings to find evidence of a conspiracy.

Today the firm currently represents clients in significant antitrust class actions around the country, including actively representing major public pension funds in prosecuting price-fixing in the financial derivatives and commodities markets in the Euribor and Yen LIBOR actions and the Foreign Currency Exchange Rate action.

While the majority of antitrust cases settle, our attorneys have experience taking antitrust class actions to trial. Because we represent only plaintiffs in antitrust matters, we do not have the conflicts of interest of other national law firms that represent both plaintiffs and defendants. Our experience also allows us to counsel medium and larger-sized corporations considering whether to participate as a class member or opt-out and pursue an individual strategy.

RESULTS

ANTITRUST SETTLEMENTS

Over the past two-and-a-half decades, Berman Tabacco has actively prosecuted scores of complex antitrust cases that led to substantial settlements for its clients. These include:

In re NASDAQ Market-Makers Antitrust Litigation, No. 94-cv-3996 (S.D.N.Y.). The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 NASDAQ Market-Makers on about 6,000 NASDAQ-listed stocks over a four-year period. The settlement was valued at nearly \$1 billion.

In re Foreign Currency Conversion Fee Antitrust Litigation, MDL No. 1409 (S.D.N.Y.). Berman Tabacco, as head of discovery against defendant Citigroup Inc., played a key role in reaching a \$336 million settlement. The agreement settled claims that the defendants, which include the VISA, MasterCard and Diners Club networks and other leading bank members of the VISA and MasterCard networks, violated federal and state antitrust laws in connection with fees charged to U.S. cardholders for transactions effected in foreign currencies.

In re DRAM Antitrust Litigation, No. M:02-cv-01486 (N.D. Cal.). As liaison counsel, the firm actively participated in this multidistrict litigation, which ultimately resulted in significant settlements with some of the world's leading manufacturers of Dynamic Random Access Memory (DRAM) chips. The defendant chip-makers allegedly conspired to fix prices of the DRAM memory chips sold in the United States during the class period. The negotiated settlements totaled nearly \$326 million.

Sullivan v. DB Investments, Inc., No. 04-02819 (D.N.J.). Berman Tabacco represented a class of diamond resellers, such as diamond jewelry stores, in this case alleging that the De Beers group of companies unlawfully monopolized the worldwide supply of diamonds in a scheme to overcharge resellers and consumers. In May 2008, a federal judge approved the settlement, which included a cash payment to class

members of \$295 million, an agreement by De Beers to submit to the jurisdiction of the United States court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. This case is significant not only because of the large cash recovery but also because previous efforts to obtain jurisdiction over De Beers in both private and government actions had failed. On August 27, 2010, the United States Court of Appeals for the Third Circuit agreed to hear arguments over whether to uphold the district court's certification of the settlement class. By agreeing to schedule an *en banc* appeal before the full court, the Third Circuit vacated a July 13, 2010 ruling by a three-judge panel of the appeals court that, in a 2-to-1 decision, had ordered a remand of the case back to the district court, which may have required substantial adjustments to the original settlement. On February 23, 2011, the Third Circuit, sitting *en banc*, again heard oral argument from the parties. On December 20, 2011, the *en banc* Third Circuit handed down its decision affirming the district court in all respects.

In re Lithium Ion Batteries Antitrust Litigation, No. 13-md-2420-YGR (N.D. Cal.). As co-lead class counsel for Direct Purchaser Plaintiffs ("DPPs") in this multidistrict antitrust litigation, the firm achieved settlements totaling \$139.3 million. The litigation arose from an alleged worldwide conspiracy to fix prices of lithium-ion rechargeable batteries ("LiBs"). LiBs are components of LiB camcorders, digital cameras and laptop computers. The alleged conspiracy involved some of the largest companies in the world—Sony, Samsung SDI, Panasonic, Sanyo, LG Chem, Toshiba, Hitachi Maxell and NEC Corp. The lawsuit alleges that defendants participated in a conspiracy to fix the prices of LiBs, which affected the prices paid for the batteries and certain products in which the batteries are used. Plaintiffs successfully defeated multiple motions to dismiss involving complex issues of antitrust standing and the pleading of conspiracy allegations. Berman Tabacco and the team negotiated multiple settlements totaling \$139.3 million. The court granted final approval on May 16, 2018.

In re Sorbates Direct Purchaser Antitrust Litigation, No. C 98-4886 CAL (N.D. Cal.). The firm served as lead counsel alleging that six manufacturers of Sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. The total settlement achieved for the class was \$96.5 million.

In re Disposable Contact Lens Antitrust Litigation, MDL No. 1030 (M.D. Fla.). The firm acted as co-lead counsel and chief trial counsel. Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and more competitive prices.

In re Cardizem CD Antitrust Litigation, No. 99-01278 (E.D. Mich.). In another case involving generic drug competition, Berman Tabacco, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies and insurance companies settled claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined the case in support of the class. The firm

achieved a significant appellate victory in a first of its kind ruling that the brand name drugmaker's payment of \$40 million per year for the generic company to delay bringing its generic version of blood-pressure medication Cardizem CD to market constituted an agreement not to compete that is a *per se* violation of the antitrust laws.

In re Toys "R" Us Antitrust Litigation, MDL No. 1211 (E.D.N.Y.). Berman Tabacco negotiated a \$56 million settlement to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. The case developed the antitrust laws with respect to a "hub and spoke" conspiracy, where a downstream power seller coerces upstream manufacturers to the detriment of consumers. One component of the settlement required Toys "R" Us to donate \$36 million worth of toys to needy children throughout the United States over a three-year period.

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation, MDL No. 05-1671 (C.D. Cal.). Berman Tabacco, as co-lead counsel, negotiated a \$48 million settlement with Union Oil Company and Unocal. The agreement settled claims that the defendants manipulated the California gas market for summertime reformulated gasoline and increased prices for consumers. The noteworthy settlement delivered to consumers a combination of clean air benefits and funding for alternative fuel research.

In re Abbott Laboratories Norvir Antitrust Litigation, Nos. 04-1511, 04-4203 (N.D. Cal.). Berman Tabacco acted as co-lead counsel in a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company engaged in an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

Automotive Refinishing Paint Antitrust, J.C.C.P. No. 4199 (Cal. Super. Ct.). In this class action, indirect purchaser-plaintiffs brought suit in California State Court against five manufacturers of automotive refinishing coatings and chemicals alleging that they violated California law by unlawfully conspiring to fix paint prices. Settlements were reached with all defendants totaling \$9.4 million, 55% of which was allocated among an End-User Class consisting of consumers and distributed on a *cy pres*, or charitable, basis to thirty-nine court-approved organizations throughout California, and the remaining 45% of which was distributed directly to a Refinishing Class consisting principally of auto-body shops located throughout California.

CONSUMER PRACTICE

With more than 35 years of class action litigation experience, Berman Tabacco is committed to bringing justice to the victims of fraudulent and abusive practices. Over the years, the firm has prosecuted and obtained recoveries for consumers against various business such as banks, computer electronics and software companies, brokers and product manufacturers.

Most recently, Berman Tabacco is seeking to apply its extensive complex class action experience to fight against unlawful and predatory lending practices. Berman Tabacco currently serves as lead counsel in

several class actions brought on behalf of individuals arguing that their need for short-term cash has been exploited by illegal online payday lending schemes. The cases allege that payday lenders issued loans in the name of sham companies established by Native American tribes, including American Web Loan, Plain Green and Great Plains Lending, in a brazen attempt to dodge usury laws and charge unlawful triple-digit interest rates.

In addition to recovering monies for consumers, the firm has obtained ground-breaking decisions for the benefit of consumers, including in cases against Wells Fargo, Morgan Stanley and Kwikset.

RESULTS

CONSUMER SETTLEMENTS

Examples of the firm's settlements include:

In re Think Finance, LLC, et al., No. 17-33964-hdh11 (Bankr. N.D. Tex.). Berman Tabacco played a pivotal role in securing a partial settlement worth approximately \$56 million to date on behalf of consumers who took out unlawful, high-interest loans issued in the name of Native American-affiliated online lenders, Plain Green and Great Plains Lending. Plaintiffs allege that non-tribal entities and individuals, including a Texas-based payday lender called Think Finance, improperly attempted to use tribal sovereign immunity as a shield for their unlawful, triple-digit lending enterprise. The partial settlement represents a significant achievement given that the bulk of the recovery was secured through Chapter 11 bankruptcy proceedings that Think Finance initiated while litigation was pending against it, a step that typically leads to a substantially limited, if any, recovery for plaintiffs. Berman Tabacco continues to pursue claims against the non-settling defendants involved in the unlawful lending enterprise.

McLaughlin v. Wells Fargo Bank, N.A., d/b/a Wells Fargo Home Mortgage, No. 3:15-CV-02904 (N.D. Cal.). Berman Tabacco served as local counsel for a class of borrowers with mortgages held and serviced by Wells Fargo in an action alleging that the bank's payoff statements violated the Truth in Lending Act ("TILA") as they failed to disclose insurance claim funds. Plaintiffs achieved a precedent-setting opinion holding that TILA requires the bank to include insurance claim funds in its mortgage payoff statements. See *McLaughlin v Wells Fargo Bank NA*, No. 3:15-cv-02904-WHA, 2015 WL 10889993 (N.D. Cal. Oct. 29, 2015). The case settled for 88% of the total maximum statutory damages available under TILA. The settlement also requires Wells Fargo to disclose insurance claim funds on all of its payoff statements going forward.

Trabakoolas v. Watts Water Technologies, Inc., No. 4:12-Cv-01172-Ygr (N.D. Cal.). Berman Tabacco served on the plaintiffs' steering committee and served as liaison counsel for this successful product liability design defect class action involving toilet nut connectors. Plaintiffs alleged a toilet connector manufactured by Watts Water Technologies, Inc., which had been installed in approximately 25 percent of homes and commercial properties built in the U.S. since the year 2000, suffered from a design defect. This defect could result in water flowing into the home, potentially causing catastrophic water damage. The settlement provided a fund of \$23 million to reimburse class members who experienced property damage and to pay for replacement of toilet nut connectors for those with allegedly defective parts.

Roskind v. Morgan Stanley Dean Witter & Co., 80 Cal. App. 4th 345 (Cal. App. 1st Dist. 2000). Berman Tabacco obtained a landmark ruling from the California Court of Appeal, holding that federal law does not preempt investors from bringing unfair business practices claims under the Business & Professions Code of California. Defendant brought this matter to the U.S. Supreme Court but the firm was successful in upholding this ruling. See *Roskind v. Morgan Stanley Dean Witter & Co.*, 2000 Cal. Lexis 6583 (Aug. 16, 2000) (petition for review denied); *Morgan Stanley Dean Witter & Co. v. Roskind*, 531 U.S. 1119 (2001) (writ of certiorari denied).

Carlin v. DairyAmerica, Inc., No. 1:09-cv-00430 (E.D. Cal.). Berman Tabacco, as co-lead counsel, obtained a \$40 million on behalf of a class of dairy farmers who sold raw milk according to prices set by the federal government. Plaintiffs claimed that DairyAmerica, the nation's largest marketer of non-fat dry milk and a California-based milk processing firm, California Dairies, conspired to inflate their own profits at the expense of dairy farmers by misreporting critical data used by the government to set raw milk prices.

Kwikset Corp. v. Superior Court of Orange County; James Benson, Real Parties in Interest, No. S171845 (Cal.). Berman Tabacco represented three union clients as *amicus curiae* before the California Supreme Court in this consumer action alleging that Kwikset falsely labeled products as "Made in the USA." The California Supreme Court's ultimate opinion (*Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011)), was highly favorable to consumers and became one of the leading opinions regarding standing under California's Unfair Competition Law.

LEADERSHIP ROLES

The firm currently acts as lead or co-lead counsel in high-profile securities, antitrust and consumer class actions and also represents investors in individual actions, ERISA cases and derivative cases.

The following is a representative list of active class action cases in which the firm serves as lead or co-lead counsel or as executive committee member.

- > *Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.). Lead counsel for court-appointed lead plaintiff Oklahoma Police Pension and Retirement System.
- > *Hayden v. Portola Pharmaceuticals, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.). Lead counsel for court-appointed lead plaintiff Alameda County Employees' Retirement Association.
- > *Koch v. Healthcare Services Group, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.). Lead counsel for court-appointed lead plaintiff Utah Retirement Systems.
- > *Northern California Pipe Trades Pension Plan v. John L. Hennessey (Alphabet Inc. Derivative Action)*, No. 19CIV00149 (Cal. Super Ct. San Mateo Cty.). Local counsel for plaintiffs and member of the Executive Committee.
- > *In re Aegean Marine Petroleum Network, Inc. Securities Litigation*, No. 18-cv-04993-NRB (S.D.N.Y.). Lead counsel for court-appointed lead plaintiff Utah Retirement Systems.

- > *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-CV-07142-HSG (N.D. Cal.). Co-lead counsel for court-appointed lead plaintiff Plymouth County Retirement Association.
- > *In re Apple Processor Litigation*, No. 18-cv-00147-EJD (N.D. Cal.). Co-lead counsel for a proposed nationwide class of purchasers of Apple devices, such as iPhones, iPads and Apple TVs.
- > *In re EpiPen ERISA Litigation*, No. 17-CV-1884 (PAM/SER) (D. Minn.). Co-lead counsel for class.
- > *Teamsters Local 443 Health Services & Ins. Plan, et al. v. Chou (AmerisourceBergen Corp.)*, No. 2019-0816 (Del. Ch.). Counsel for San Antonio Fire & Police Pension Fund in derivative action involving AmerisourceBergen Corporation, which commenced by the issuance of a books and records demand, *San Antonio Fire & Police Pension Fund v. AmerisourceBergen Corp.*, C.A. No. 2018-0551 (Del. Ch.).
- > *Solomon v. American Web Loan, Inc.*, et al., No. 4:17-CV-145 (E.D. VA.). Co-Lead counsel for nationwide class.
- > *Gingras v. Rosette*, No. 5:15-CV-00101-GWC (D. VT.), and *Gingras v. Victory Park Capital Advisors, LLC, et al.*, No. 5:17-CV-233 (D. VT.). Co-lead counsel for nationwide class.
- > *Granger v. Great Plains Lending, LLC, et al.*, No. 1:18-cv-00112 (M.D.N.C.) Co-lead counsel for nationwide class.
- > *In re UnitedHealth Section 220 Litigation*, C.A. No. 0681-TMR (Del. Ch.). Co-lead counsel representing plaintiff Amalgamated Bank.
- > *Massachusetts Laborers' Pension Fund v. Wells Fargo & Co., et al.*, C.A. No. 12997-VCG (Del. Ch. Ct.). Counsel for Massachusetts Laborers' Pension Fund and the Employees' Retirement System of the City of Providence in action under Section 220 of the Delaware General Corporation Law in order to evaluate whether the facts support a derivative suit on behalf of Wells Fargo against its officers and directors for breaches of their fiduciary duties.
- > *Oliver, et al. v. American Express Co., et al.*, No. 1:19-cv-00566-NGG-SMG (S.D.N.Y.). Co-Chairs of Plaintiffs' Executive Committee of interim class counsel in antitrust class action.
- > *Norfolk County Retirement System v. Smith (Sinclair Broadcast Group Derivative Action)*, No. 18-cv-03952 (D. Md.). Plaintiffs' Counsel representing Norfolk County Retirement System in this shareholder derivative action.
- > *Sullivan v. Barclays PLC*, No. 13-cv-2811 (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System.
- > *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System and Oklahoma Police Pension and Retirement System.

- > *In re Mexican Government Bonds Antitrust Litigation*, No. 18-CV-02830 (JPO) (S.D.N.Y.). Counsel for Oklahoma Firefighters Pension & Retirement System and Electrical Workers Pension Fund Local 103, I.B.E.W.
- > *Carlin v. DairyAmerica, Inc.*, No. 09-cv-00430 (E.D. Cal.). Member of the Interim Executive Committee and Liaison Counsel.

TRIAL EXPERIENCE

The firm has significant experience taking class actions to trial. Over the years, Berman Tabacco's attorneys have tried cases against pharmaceutical companies in courtrooms in New York and Boston, a railroad conglomerate in Delaware, one of the nation's largest trustee banks in Philadelphia, a major food retailer in St. Louis and the top officers of a failed New England bank.

The firm has been involved in more trials than most of the firms in the plaintiffs' class action bar. Our partners' trial experience includes:

- > *In re PHC, Inc. Shareholder Litigation*, No. 1:11-cv-11049-PBS (D. Mass.). After two-week trial in 2017 in this breach of fiduciary class action, jury verdict for plaintiffs but no damage award. Following post-trial briefing, court exercised its equitable power and ordered \$3 million award by defendant.
- > *Conway v. Licata*, No. 13-12193 (D. Mass.). 2015 jury verdict for defendants (firm's client) after two-week trial on the vast majority of counts, awarding the plaintiffs a mere fraction of the damages sought. Jury also returned a verdict for defendants on one of their counterclaims.
- > *In re MetLife Demutualization Litigation*, No. 00-Civ-2258 (E.D.N.Y.). This case settled for \$50 million after the jury was empaneled.
- > *White v. Heartland High-Yield Municipal Bond Fund*, No. 00-C-1388 (E.D. Wis.). Firm attorneys conducted three weeks of a jury trial against final defendant, PwC, before a settlement was reached for \$8.25 million. The total settlement amount was \$23.25 million.
- > *In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.). Settled for \$60 million with defendant Johnson & Johnson after five weeks of trial.
- > *Gutman v. Howard Savings Bank*, No. 2:90-cv-02397 (D.N.J.). Jury verdict for plaintiffs after three weeks of trial in individual action. The firm also obtained a landmark opinion allowing investors to pursue common law fraud claims arising out of their decision to retain securities as opposed to purchasing new shares. See *Gutman v. Howard Savings Bank*, 748 F. Supp. 254 (D.N.J. 1990).
- > *Hurley v. Federal Deposit Insurance Corp.*, No. 88-cv-940 (D. Mass.). Bench verdict for plaintiffs.
- > *Levine v. Fenster*, No. 2-cv-895131 (D.N.J.). Plaintiffs' verdict of \$3 million following four-week trial.
- > *In re Equitec Securities Litigation*, No. 90-cv-2064 (N.D. Cal.). Parties reached a \$35 million settlement at the close of evidence following five-month trial.

- > *In re ICN/Viratek Securities Litigation*, No. 87-cv-4296 (S.D.N.Y.). Hung jury with 8-1 vote in favor of plaintiffs; the case eventually settled for over \$14.5 million.
- > *In re Biogen Securities Litigation*, No. 94-cv-12177 (D. Mass.). Verdict for defendants.
- > *Upp v. Mellon*, No. 91-5219 (E.D. Pa.). In this bench trial, tried through verdict in 1992, the court found for a class of trust beneficiaries in a suit against the trustee bank and ordered disgorgement of fees. The Third Circuit later reversed based on lack of jurisdiction.

OUR ATTORNEYS

Partners

DANIEL E. BARENBAUM



A partner in the firm's San Francisco office and member of the firm's Executive Committee, Daniel Barenbaum focuses his practice on securities litigation. Mr. Barenbaum was one of the lead attorneys representing the California Public Employees' Retirement System in the landmark case brought against the major credit rating agencies (Standard & Poor's and Moody's) in connection with the marketing of one of the largest, most complex structured-finance securities ever devised. The case settled for a total of \$255 million. He also represented co-lead plaintiff for the common stock class Massachusetts Pension Reserves Investment Management Board in a case that settled for \$170 million against Fannie Mae; the complaint centered on misrepresentations regarding the amount of subprime and Alt-A on the company's books and the lack of adequate risk controls used and disclosed to manage those types of loans. Further, Mr. Barenbaum regularly represents institutional investor clients in matters involving multi-party issues/disputes and complex discovery (for documents, individual depositions, and institutional "person most knowledgeable" depositions of key executives), including matters where they stand to collect millions of dollars as potential beneficiaries of certain government agencies' investigations or civil actions.

Mr. Barenbaum is one of the lead partners for the team representing the sole Lead Plaintiff Alameda County Employees' Retirement Association in *Hayden v. Portola Pharmaceuticals Inc., et al.*, No. 3:20-cv-00367-VC (N.D. Cal.)—securities litigation brought on behalf of investors in Portola Pharmaceuticals, Inc., a biopharmaceutical company that develops and commercializes treatments for thrombosis and other hematologic diseases. Portola's primary product is Andexxa, a reversal drug for apixaban- and rivaroxaban-treated patients with life-threatening or uncontrolled bleeding. The action alleges that, between January 8, 2019 and February 26, 2020, defendants issued materially false and misleading statements related to the sales of Andexxa. Lead Plaintiff's complaint alleges violations of Sections 10(a) and 20(a) of the Securities Exchange Act of 1934, and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. Specially, the complaint alleges that defendants' positive statements about the company's business, operations, and prospects were material misrepresentations of fact and/or lacked a reasonable basis. The company is alleged to have misrepresented (1) that it complied with GAAP, specifically as to recognizing revenue according to ASC-606 and under-reserving for returns given that Portola's product Andexxa had a short-shelf-life and the company therefore offered a generous return policy on all expired product; and (2) customer demand and utilization of Andexxa for those that purchased it (e.g., hospital and hospital-system pharmacies), both as to depth (regularity of usage) and breadth (types of bleeds prescribed for).

Mr. Barenbaum has been an integral member of the firm's litigation teams, such as for *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), where the firm acted as co-lead counsel representing the Massachusetts Laborers' Pension Fund for an alleged accounting fraud that originated at

the company's foreign subsidiary. Mr. Barenbaum was also a key member of the team that developed the firm's individual-case strategy necessitated by the Supreme Court's decision in *Morrison v. National Australia Bank, Ltd.*, 561 U.S. 247, 130 S. Ct. 2869 (2010), in *In re BP, p.l.c. Securities Litigation*, No. 10-md-2185 (S.D. Tex.). Mr. Barenbaum previously worked to prepare for trial *In re MetLife Demutualization Litigation*, No. 00-Civ-2258 (E.D.N.Y.) – a case before the Hon. Jack Weinstein that settled after the jury was empaneled.

Mr. Barenbaum was formerly an associate and partner at Lieff, Cabraser, Heimann & Bernstein, LLP where he was a member of the securities practice group and actively litigated, among other cases, two state-court individual securities actions involving large-scale accounting fraud. The first was against McKesson HBOC, where the firm represented two Merrill Lynch mutual funds and that alleged state law claims; the case settled days before trial was to commence. The second involved Peregrine, where the firm represented individual directors whose company had been acquired by Peregrine and whose options and shares had been converted to Peregrine shares. Mr. Barenbaum worked on all facets of litigation in those cases, from dispositive motions to discovery to appeals to oral argument.

At Lieff Cabraser, Mr. Barenbaum was a supervising partner on the firm's Vioxx injury cases, where the firm had a leadership role in the large multidistrict litigation. In that role, Mr. Barenbaum oversaw service pursuant to the Hague Convention of hundreds of Vioxx complaints against foreign (U.K) defendants and also acted as the primary point of contact for all foreign co-counsel. Prior to that, Mr. Barenbaum was the lead associate on the Sulzer Hip Implant injury cases, where he oversaw the service of hundreds of Sulzer complaints against foreign defendants in several countries (including Switzerland).

Mr. Barenbaum has been ranked by *Benchmark Litigation* as a *California State Litigation Star* (2020-2022), *San Francisco Local Litigation Star* (2020-2022), and *Noted Star* (2020-2021) in *Plaintiff Work and Securities* and as a *Recommended Attorney* in *Securities Litigation* by *The Legal 500* (2017-2020), which, in 2020, reported a client's praise for Mr. Barenbaum that he "is top-notch with superb attention to detail when drafting papers, arguing motions and negotiating." He has also been selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine (2020-2021). Mr. Barenbaum earned his J.D. and M.B.A. degrees from Emory University in 2000, where he received the business school award for *Most Outstanding Academic Accomplishment*. He obtained his B.A. in English from Tufts University in 1994. Mr. Barenbaum was Notes and Comments Editor for 1999-2000 for the Emory Bankruptcy Developments Journal. He is the author of *Delineating Covered Class Actions Under SLUSA, Securities Litigation Report* (December-January 2005); co-author of *The Currency of Capitalism With a Social Conscience*, Financier Worldwide Magazine (June 2018); *Snap Judgment—S&P Dow Jones and FTSE Russell Indices Ensure That Investors Retain Voting Rights*, Financier Worldwide Magazine (October 2017); and *Class Certification of Medical Monitoring Claims in Mass Tort Product Liability Litigation* (Leader Publications, 1999); and Contributing Author to *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser, Editor-in-Chief, 2003). Having successfully obtained his Series 7 and 66 licenses, he was previously registered with the U.S. Securities and Exchange Commission as both a broker-dealer representative and an investment advisor.

Mr. Barenbaum is admitted to the state bar of California, as well as the Northern, Central, Southern and Eastern Districts of California. He is also admitted to the Ninth Circuit of the U.S. Court of Appeals and has been admitted *pro hac vice* in federal and state courts around the country.

NORMAN BERMAN



In 1982, Norman Berman co-founded Berman Tabacco & Pease LLP, a predecessor to Berman Tabacco. He focuses his practice principally on complex securities and antitrust litigation. He also oversees and coordinates the firm's mergers and acquisitions litigation practice.

During the course of his career, Mr. Berman has litigated numerous cases to successful resolution, recovering many millions of dollars on behalf of defrauded investors. He was among the lead attorneys in the *In re Philip Services Corp. Securities Litigation*; *In re Force Protection Inc. Securities Litigation* and the *ICG Communications, Inc.* class actions. In the case against Philip Services, Mr. Berman assisted in recovering a \$79.75 million settlement in this alleged fraud at a Canadian company, which gave rise to issues of foreign discovery. Until recently, that settlement includes the largest recovery ever obtained from a Canadian auditor. In the class action against Force Protection, he assisted in securing a \$24 million settlement. In ICG Communications, he helped to successfully secure an \$18 million settlement. Co-lead plaintiffs in the case alleged that ICG executives misled investors and misrepresented ICG's growth, revenues and network capabilities throughout the class period.

Mr. Berman was also part of the team that achieved a \$750 million recovery in *Carlson v. Xerox Corp.*, in which the firm represented the Louisiana State Employees' Retirement System as co-lead counsel. Mr. Berman coordinated and conducted discovery, including a massive document review, in that international fraud class action. At the time, the recovery was the 10th largest securities class action settlement in history.

Mr. Berman has acted as trial counsel in a number of successful cases, including *Hurley v. Federal Deposit Insurance Corp.*, where the court entered an \$18 million judgment against the failed First Service Bank for Savings, and *ICN Securities Litigation*, which settled after trial for more than \$14.5 million in 1996. The trial team's work in *ICN* prompted positive judicial comment. Mr. Berman also acted as a senior member of the trial team in the case of *In re Biogen Securities Litigation* and as a member of the trial team in *In re Zila Inc. Securities Litigation*, which settled during trial preparation, *Poughkeepsie Savings Bank v. Morash* and other matters.

Prior to co-founding Berman Tabacco & Pease, LLP in 1982, Mr. Berman was associated with the Boston-based general practice firms Barron & Stadfeld, P.C. and Harold Brown & Associates.

Mr. Berman graduated from Boston University in 1970 and from Suffolk University Law School in 1974. While in law school, he was a member of the Public Defenders Group and, following law school, was an intern with the Massachusetts Defenders Committee.

Mr. Berman is co-author of a chapter on expert testimony in a handbook on Massachusetts Evidence published by Massachusetts Continuing Legal Education. He is AV Preeminent® rated by Martindale-Hubbell®, has been designated a Local Litigation Star in Securities by Benchmark Litigation in 2013-2015 and 2017-2022 and has been named a Super Lawyer by Massachusetts Super Lawyers Magazine in 2004-

2006 and every year since 2009. He was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021).

He is admitted to practice law in the Commonwealth of Massachusetts, the State of Connecticut and before the U.S. Supreme Court, as well as the District Courts of Colorado and Connecticut.

STEVEN J. BUTTACAVOLI



A partner in the firm's Boston office, Steven J. Buttacavoli focuses his practice on securities and RICO class action litigation.

At Berman Tabacco, Mr. Buttacavoli is currently among the partners representing lead plaintiff Utah Retirement Systems in securities class action litigation, *Koch v. Healthcare Services Group, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.), which recently settled for \$16.8 million, pending court approval. He is also among the partners representing the lead plaintiff in a derivative action brought against certain directors and offices of Cigna Corporation, *Massachusetts Laborers' Annuity Fund v. Cordani, et al.*, C.A. No. 2020-0990-JTL (Del. Ch.), where he played a central role in drafting Plaintiff's opposition to defendants' motions to dismiss.

Mr. Buttacavoli was one of the lead attorneys who managed day-to-day litigation activities on behalf of the Ohio Public Employees Retirement System, co-lead plaintiff in *In re BP p.l.c. Securities Litigation*.

Mr. Buttacavoli assisted in drafting the amended complaint, drafting the opposition to defendants' motion to dismiss, drafting plaintiffs' motion for class certification, drafting summary judgment and *Daubert* briefs, and led fact and expert discovery efforts in this matter. The court granted final approval to a \$175 million settlement in BP class action in February 2017. Mr. Buttacavoli represented four Ohio pension funds in connection with the litigation and settlement of *Ohio Public Employees Retirement System, et al. v. BP plc*, No. 12-cv-1837 (S.D. Tex.), a separate, individual action filed against BP in connection with the funds' purchase of BP ordinary shares on the London Stock Exchange. He also helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the General Electric Co., drafted the consolidated amended complaint in a class action against the company, drafted lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court and conducted discovery in that matter, which settled for \$40 million in 2013. Mr. Buttacavoli also helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the former top executives of BankUnited, drafted the consolidated amended complaint and opposition to defendants' motions to dismiss and drafted materials prepared in connection with the mediation and settlement of *In re BankUnited Securities Litigation*. Mr. Buttacavoli also advises whistleblowers in connection with the reporting of potential securities violations to the U.S. Securities and Exchange Commission and has advised numerous clients regarding potential claims involving custodian banks' foreign currency exchange pricing practices. He represented whistleblowers in connection with the drafting and submission of an application for an SEC whistleblower award that resulted in an award of over \$50 million, which was the second-largest SEC whistleblower award at the time.

In addition to his securities litigation practice, Mr. Buttacavoli is a lead member of the Berman Tabacco team that pioneered the prosecution of nationwide federal RICO class actions against the operators and financial

backers of allegedly unlawful online lending schemes that attempt to circumvent federal and state law through sham relationships with Native American tribes. These efforts resulted in significant settlements for the benefit of the victims of those schemes, including *Solomon, et al. v. American Web Loan, Inc., et al.*, No. 17-cv-145 (E.D. Va.) (which settled for a total value of over \$186 million, including \$86 million in cash, cancellation of over \$100 million in outstanding debt, and other non-monetary and injunctive relief) and *Gingras, et al. v. Victory Park Capital Advisors, LLC, et al.*, No. 17-cv-00233 (D. Vt.), *Gingras, et al. v. Rosette, et al.*, No. 15-cv-101 (D. Vt.), and *Granger, et al. v. Great Plains Lending, LLC, et al.*, No. 1:18-cv-00112 (M.D.N.C.) (which led to over \$47 million in settlements).

Prior to joining Berman Tabacco in 2009, Mr. Buttacavoli worked as an associate at major corporate law firms in Boston, where he defended securities class actions and U.S. Securities and Exchange Commission enforcement actions, conducted internal investigations, responded to criminal investigations by the United States Attorney's Office, and advised clients in connection with litigation risk analysis and mitigation strategies.

Mr. Buttacavoli earned an A.B. in International Relations from the College of William & Mary and a Master of Public Policy degree from Georgetown University. In 2001, he earned his J.D., *magna cum laude*, from the Georgetown University Law Center, where he was a member of the Order of the Coif. Mr. Buttacavoli was also a Senior Articles and Notes Editor for the *American Criminal Law Review*.

Mr. Buttacavoli was ranked as a *Recommended Attorney in Securities Litigation* by *The Legal 500* (2017-2019) and was ranked as a *Super Lawyer* by *Massachusetts Super Lawyers Magazine* in 2021.

He is admitted to practice in the state and federal courts of the Commonwealth of Massachusetts and the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, and Eleventh Circuits.

KATHLEEN M. DONOVAN-MAHER



Kathleen M. Donovan-Maher is a member of the firm's Executive Committee and manages the Boston office. She became a partner at Berman Tabacco in 1999 and, in addition to managing the firm, she focuses her work in the firm's securities and whistleblower practices.

During her career, Ms. Donovan-Maher has successfully helped to prosecute numerous class actions. She led the day-to-day prosecution of the litigation against General Electric Co., which settled for \$40 million in 2013.

Ms. Donovan-Maher also served as discovery captain in the *NASDAQ Market Makers Antitrust Litigation*, which settled for \$1.027 billion and was a member of the trial team in the *ICN/Viratek Securities Litigation*, which settled for \$14.5 million after the jury deadlocked at the conclusion of the 1996 trial. Other cases in which Ms. Donovan-Maher has played a chief role include, but are not limited to, *In re BankUnited Securities Litigation*, *In re American Home Mortgage*, *Wyatt v. El Paso Corp.*, *In re Enterasys Networks, Inc. Securities Litigation* and *In re SmartForce/SkillSoft Securities Litigation*. In all cases, Ms. Donovan-Maher's efforts helped achieve significant financial recoveries for such public retirement systems as the State Universities Retirement System of Illinois, Oklahoma Police Pension &

Retirement System, the Los Angeles County Employees Retirement Association and the Teachers' Retirement System of Louisiana.

In addition to a monetary award, the *Enterasys Networks* settlement also included corporate governance improvements, requiring the company to back a proposal to eliminate its staggered board of directors, allow certain large shareholders to propose candidates to the board and expand the company's annual proxy disclosures.

In *In re Centennial Technologies Litigation*, Ms. Donovan-Maher secured a \$207 million judgment against defendant Emanuel Pinez, Centennial's founder and former CEO and Chairman of the Board of Directors who was the primary architect of one of the largest financial frauds in Massachusetts history at the time.

Ms. Donovan-Maher graduated from Suffolk University *magna cum laude* in 1988, receiving a B.S. degree in Business Administration, concentrating in Finance with a minor in Economics. Ms. Donovan-Maher earned an award for maintaining the highest grade point average among students with concentrations in Finance. She graduated from Suffolk University Law School three years later after serving two years on the *Transnational Law Review*.

A member in good standing of the state bar of Massachusetts, Ms. Donovan-Maher is admitted to practice law in the U.S. District Court for the District of Massachusetts, the U.S. Supreme Court and the U.S. Courts of Appeals in the First, Second, Third, Fourth and Eleventh Circuits. *Martindale-Hubbell*® has rated her AV Preeminent® and selected her for the *Martindale-Hubbell*® 2013 Bar Register of Preeminent Women Lawyers™. She was also selected as one of *New England's Top-Rated Lawyers* by *Martindale-Hubbell*® (2013, 2018-2020), as featured in *The National Law Journal*. *Martindale-Hubbell*® also selected her as a *Top-Rated Litigator* (2019) and as one of its *Women Leaders In Law* (2021). She has also been designated by *Benchmark Litigation* as a *Local Litigation Star* (2013-2015, 2021-2022) and was recognized as a *Benchmark Plaintiff Top 150 Women in Litigation*. She has also been designated as a *Super Lawyer* by *Massachusetts Super Lawyers* magazine (2004-2005, 2020-2021). She was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). Ms. Donovan-Maher is a frequent author on continuing legal education issues for such groups as ALI-ABA and PLI. She is also a member of Phi Delta Phi, Delta Mu Delta National Honor Society in Business Administration, Omicron Delta Epsilon International Honor Society of Economics, the American Bar Association and the Boston Bar Association.

PATRICK T. EGAN



A partner in Boston, Patrick T. Egan focuses his practice on securities litigation. Mr. Egan has litigated numerous cases to successful resolution, recovering hundreds of millions of dollars on behalf of defrauded investors.

Mr. Egan was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He was also a lead attorney representing the Michigan State

Retirement Systems in the *In re Bear Stearns Companies* litigation stemming from the 2008 collapse of the company. Plaintiffs successfully recovered \$294.9 million for former Bear Stearns shareholders.

Mr. Egan has worked on a number of important cases, including *Lernout & Hauspie* and the related case, *Quaak v. Dexia, S.A.* Those cases stem from a massive accounting fraud scheme at Lernout & Hauspie Speech Products, N.V., a bankrupt Belgian software company. As co-lead counsel, the firm recovered more than \$180 million on behalf of former Lernout & Hauspie shareholders.

Prior to joining the firm in 1999 and being named partner in 2006, Mr. Egan worked at the U.S. Department of Labor, where he served as an attorney advisor for the Office of Administrative Law Judges. Mr. Egan received a B.A. in Political Science *cum laude* from Providence College in 1993. In 1997, he graduated *cum laude* from Suffolk University Law School. While at Suffolk, Mr. Egan served on the editorial board of the *Suffolk University Law Review* and authored a note entitled, *Virtual Community Standards: Should Obscenity Law Recognize the Contemporary Community Standard of Cyberspace*, 30 Suffolk University L. Rev. 117 (1996).

Mr. Egan was also an Adjunct Faculty member of the Business Studies department at Assumption College, where he taught a course on Corporate Governance and White-Collar Crime. He has been ranked by *The Legal 500* as a Recommended Attorney in *Securities Litigation* (2018-2019) and *Antitrust* (2019-2021). He has also been ranked by *Benchmark Litigation* as a Local Litigation Star (2013-2015, 2021-2022) and as a Massachusetts State Litigation Star (2018-2020) in *Competition* and *Securities*.

Mr. Egan is admitted to practice law in the Commonwealth of Massachusetts, the states of Connecticut and New York, as well as the U.S. District Courts for the District of Massachusetts, the Southern District of New York, Eastern District of New York and the Eastern District of Michigan. He is also admitted to practice before the U.S. Supreme Court and U.S. Courts of Appeals in the First, Second and Fourth Circuits.

CARL HAMMARSKJOLD



A partner in the firm's San Francisco office, Carl Hammarskjold focuses his practice on antitrust and securities cases. Mr. Hammarskjold represents the firm's clients and class plaintiffs in several financial market manipulation and antitrust class actions on behalf of investors alleging that major banks colluded to fix the prices of bonds and derivatives. These cases include *In re Mexican Government Bonds Antitrust Litigation*, No. 18-cv-02830 (S.D.N.Y.), *Euribor (Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)), *Yen Libor (Sonterra Capital Master Fund, LTD. v. UBS AG, et al.*, No. 15-cv-5844 (S.D.N.Y.)), *Australian Dollar (Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (S.D.N.Y.)), and *In re GSE Bonds Antitrust Litigation*, No. 19-cv-01704 (S.D.N.Y.).

Plaintiffs in *GSE Bonds* reached settlements with all defendants totaling \$386.5 million. He also represents the firm's client and class plaintiffs in a nationwide antitrust class action on behalf of direct purchasers of lithium ion rechargeable batteries that resulted in settlements totaling \$139.3 million. *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-02420-YGR (N.D. Cal.).

Mr. Hammarskjold also represents Lead Plaintiff and class plaintiffs in *Sterling Bancorp, Inc. Securities Litigation* (*Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc., et al.*, No. 5:20-Cv-10490-JEL-EAS (E.D. Mich.)), which recently settled for \$12.5 million, which was approved by the court on September 23, 2021.

During his prior work in the plaintiffs' bar, Mr. Hammarskjold represented class plaintiffs in *Kleen Products, LLC, et al. v. Packaging Corp. of America, et al.*, No. 10-cv-05711 (N.D. Ill.) (containerboard antitrust litigation) and was part of the appellate team whose work resulted in a published Ninth Circuit opinion in *Bozzio v. EMI Group Ltd, et al.*, No. 13-15685 (9th Cir.).

Prior to joining Berman Tabacco in 2018, Mr. Hammarskjold worked for a San Francisco-based plaintiffs' law firm specializing in antitrust class actions and other complex, multidistrict litigation in federal court. He was also a business litigator at a large, national law firm.

Mr. Hammarskjold earned his J.D., *summa cum laude*, from the University of San Francisco School of Law, where he graduated first in his class and received the Academic Excellence Award for Extraordinary Contribution to the Intellectual Life of the School. During law school, he served as an extern for the Honorable William H. Alsup at the U.S. District Court for the Northern District of California.

Mr. Hammarskjold has a B.A. from Pomona College.

Mr. Hammarskjold is rated AV Preeminent® by *Martindale-Hubbell®* and was selected by *Northern California Super Lawyers* magazine as a *Rising Star* in 2016-2020. He was also recognized in *The Best Lawyers in America® for Mass Tort Litigation / Class Actions – Plaintiffs* (2021-2022).

Mr. Hammarskjold serves on the Executive Committee of the Antitrust & Business Regulation Section of the San Francisco Bar Association.

CHRISTOPHER T. HEFFELFINGER



Christopher T. Heffelfinger, a partner in Berman Tabacco's San Francisco office, has devoted most of his professional career to pursuing justice on behalf of those who have been harmed by financial fraud and anticompetitive-unfair trade practices. For over thirty (30) years, Mr. Heffelfinger has worked collaboratively as co-lead and participatory counsel in a variety of cases many industries in both securities and antitrust matters.

Mr. Heffelfinger has run a number of PSLRA cases including *In re Warnaco Group Inc. Securities Litigation*, No. 00-CIV-06266 (S.D.N.Y), where he

represented Fresno County Employees' Retirement Association, which settled for \$12.85 million following reversal of dismissal by the Second Circuit. Mr. Heffelfinger also has extensive experience in securities class actions generally, having prosecuted, for example, *In re Avant! Securities Litigation*, No. 96-cv-20132 (N.D. Cal.) (recovering \$35 million for the class, almost 50% of losses, net of attorneys' fees and expenses). Mr. Heffelfinger participated as counsel in *In re LDK Solar Securities Litigation*, No. C-07-05182-WHA (N.D. Cal.), a case alleging an inventory accounting fraud by this Chinese company regarding

its treatment of different grades poly-silicon used in the production of solar panels. He participated in all phases of discovery including deposition practice in Hong Kong, expert work, summary judgment and trial preparation. *LDK Solar* settled for \$13 million. Similarly, Mr. Heffelfinger was requested by lead counsel in *In re Broadcom Corp., Securities Litigation*, No. 01-cv-00275 (C.D. Cal.), to conduct a series of depositions (fact and expert) in a securities case alleging the improper accounting treatment of warrants used by Broadcom to make acquisitions of other companies. *Broadcom* settled for \$150 million.

Mr. Heffelfinger has also served as co-lead or participatory counsel in the following cases: In *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation (Indirect Case)*, No. M:02-cv-01486 (N.D. Cal.), Mr. Heffelfinger was appointed by the Special Master, Ret. U.S. District Court Judge Charles B. Renfrew, to serve as settlement allocation counsel for indirect reseller purchasers in DRAM. The case obtained final approval, with the Special Master acknowledging in his Report and Recommendations to the Court that the efforts by the parties to resolve the allocation issues were an essential link in the sequence of negotiations that culminated in the proposed plan of distribution. Mr. Heffelfinger was also the lead partner for the firm in the prosecution of *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation*, MDL No. 05-1671 (C.D. Cal.) which alleged that defendants manipulated the California gas market for summertime reformulated gasoline and artificially increased prices for consumers. As co-lead counsel, the firm achieved a settlement valued at \$48 million. Chris was also an integral member of the team representing toy purchaser consumers as co-lead counsel in *In re Toys "R" Us Antitrust Litigation* (USDC-ED NY. 2000), a Federal Multi District Litigation alleging that Toys "R" Us had conspired with certain toy manufacturers to not sell certain popularly promoted toys to deep discount retailers such as Costco, in contravention of the antitrust laws and various state unfair competition/practices statutes. The team achieved a settlement with a combined value of \$56 million.

Mr. Heffelfinger served on active duty as an infantry officer in the U.S. Marine Corps, 1977-80, and again for nine months in 1990-1991 as a Captain with a rifle company in support of Operations Desert Shield/Storm. He has lectured periodically on discovery matters, including electronically stored information, deposition practice and evidentiary foundations in commercial litigation. Mr. Heffelfinger was named a *Super Lawyer* by *Northern California Super Lawyers* magazine every year since 2009 and he has an *AV Preeminent*® rating by *Martindale-Hubbell*®. He has also been recognized in *The Best Lawyers in America*® for *Litigation-Antitrust* (2018-2022) and in *Northern California Best Lawyers* for *Litigation-Antitrust* (2021), was ranked by *The Legal 500* as a *Recommended Attorney* in *Antitrust* (2019-2020), and was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). He has also been recognized by *Global Competition Review's Who's Who Legal: Competition* (2021). Mr. Heffelfinger is admitted to practice law in the State of California, the U.S. District Court for the Northern, Eastern, Central and Southern Districts of California, the U.S. District Court for the District of Arizona and the Ninth Circuit U.S. Court of Appeals. Mr. Heffelfinger received his B.A. in Economics from Claremont McKenna College in 1977 and his J.D. from the University of San Francisco School of Law in 1984.

NICOLE LAVALLEE



Nicole Lavallee, the managing partner of the firm's San Francisco office and member of the firm's Executive Committee, focuses her practice on prosecuting securities and derivative actions. She is also an integral member of the firm's New Case Investigations Team, which oversees the firm's portfolio monitoring program and investigates potential securities law violations to determine whether a case meets the firm's exacting standards.

Since the enactment of the PSLRA, Ms. Lavallee has prosecuted numerous high-profile securities fraud cases for the firm. For example, she was one of the lead attorneys overseeing the *In re IndyMac Mortgage-Backed Securities Litigation*, No. 09-cv-4583 (S.D.N.Y.), which settled for \$346 million – one of the largest private MBS recoveries on record and the largest of any case where the issuer bank was in bankruptcy.

Over the years, Ms. Lavallee has been the lead partner managing the day-to-day prosecution of numerous other cases, where she handled or oversaw case investigation and factual development and briefing (including appeal briefing), conducted depositions, argued key motions (including motions to dismiss, motions for summary judgment and/or discovery motions), and participated in settlement negotiations. Examples that resulted in favorable judicial commentary include: (i) *In re KLA-Tencor Corp. Securities Litigation*, No. C06-04065 (N.D. Cal.), an options-backdating class action, representing co-lead plaintiff the Louisiana Municipal Police Employees' Retirement System, which settled for \$65 million; (ii) *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), on behalf of the co-lead plaintiff Massachusetts Laborers' Pension Fund, alleging manipulation of the company's financial results, which settled for \$90 million in 2009; and (iii) *Oracle Cases, Coordination Proceeding, Special Title (Rule 1550(b))*, No. JCCP 4180 (Cal. Super. Ct. San Mateo Cty.), a derivative case alleging that Lawrence Ellison engaged in illicit insider trading, and which settled weeks before trial when Defendant Larry Ellison agreed to make \$100 million in charitable donations in Oracle's name.

Ms. Lavallee also represented numerous institutional clients in opt-out actions, including *State of Oregon v. McKesson HBOC, Inc.*, Master File No. 307619 (Cal. Super. Ct. San Francisco Cty.), an individual opt-out action brought on behalf of the retirement systems for Colorado, Utah, and Minnesota, and opt-out actions on behalf of State of Michigan Retirement System and Fresno County Employees' Retirement Association against Countrywide Financial Corp. (*State Treasurer of The State of Michigan v. Countrywide Financial Corp.*, No. CV-11-00809 (C.D. Cal.) and *Fresno County Employees Retirement Association v. Countrywide Financial Corp.*, No. CV-11-00811 (C.D. Cal.)). She has also worked on several securities-fraud trials over the past 25 years.

Currently, Ms. Lavallee is a lead partner at Berman Tabacco on several class action securities fraud cases. She is co-lead counsel representing court-appointed lead plaintiff Plymouth County Retirement Association in *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-CV-07142-HSG (N.D. Cal.), an action alleging that defendants Aqua Metals, Inc. and company executives falsely misled investors about the status of its implementation of and operations of its AquaRefining technology, which the company claimed had the potential to revolutionize lead recycling and make lead-acid batteries the only truly sustainable battery technology. The case recently settled for \$7 million, pending court approval. She is also overseeing the

securities class actions *Koch v. Healthcare Services Group, Inc.*, No. 19-cv-1227-ER (E.D. Pa.), which recently settled for \$16.8 million, pending court approval, and *In re Aegean Marine Petroleum Network, Inc. Securities Litigation*, No. 18-cv-04993-NRB (S.D.N.Y.). Further, Ms. Lavallee is also involved in the prosecution of several derivative actions including *Teamsters Local 443 Health Services & Ins. Plan, et al. v. Chou*, No. 2019-0816 (Del. Ch.), involving AmerisourceBergen Corp. asserting that the Company's executives breached their fiduciary duties in connection with the Company's subsidiary's alleged illegal scheme to produce and market unapproved prefilled syringes ("PFS") in violation of federal and state laws. In 2017, Amerisource entered a guilty plea related to the alleged illegal PFS scheme and has paid more than \$875 million in penalties and fines to settle related civil and criminal claims.

In 2021, Ms. Lavallee was ranked by *Chambers USA* in California under *Litigation-Securities*, which quoted an opposing counsel as stating that "Nicole is a good adversary, she is smart and puts up a good fight for her clients." She has been ranked by *Benchmark Litigation* as a *California State Litigation Star* (2020-2022), *San Francisco Litigation Star* (2020-2022), and *Noted Star* (2019-2020) in *Plaintiff Work* and *Securities*. She was also recognized in *The Best Lawyers in America*® for *Litigation-Securities* (2021-2022) and in the *Northern California Best Lawyers* for *Litigation-Securities* (2021). She has also been recognized as a *Recommended Attorney in Securities Litigation* by *The Legal 500* (2017-2021). In 2021, Nicole was ranked as one of the *Top Women Lawyers* in California by the *Daily Journal*. *Northern California Super Lawyers* magazine named her to their lists of the *Top 100* attorneys in California (2021) and the *Top 50 Women* attorneys in California (2021). She has also been named a *Super Lawyer* by *Northern California Super Lawyers* magazine (2017-2020) and was included in *San Francisco Magazine's Top Women Attorneys in Northern California* (2017-2019). Ms. Lavallee has an AV Preeminent® rating from *Martindale-Hubbell*® and was selected for the *Martindale-Hubbell*® *Bar Register of Preeminent Women Lawyers*™. *Martindale-Hubbell*® also selected her as a *Top-Rated Litigator* (2019) and as one of its *Women Leaders In Law* (2021). Ms. Lavallee was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021).

Ms. Lavallee has authored numerous articles and lectured on securities litigation. She was co-chair for the 2016 Cross-Border Litigation Forum, a gathering of the most senior legal practitioners in U.S./Canada cross-border litigation (was also on the Steering Committee for the 2012 and 2014 forums), and she is currently on the Steering Committee for the 2020 Cambridge Forum on Plaintiffs' Class Action Litigation (where she previously served on the Steering Committee for the 2019 forum). Further, Ms. Lavallee is active in the Bar Association of San Francisco ("BASF"), serving on the Steering Committee of the Women's Impact Network: No Glass Ceiling 2.0 and as a Member of BASF's Policy Impact Working Group of the Women's Impact Network.

Ms. Lavallee is admitted to practice in California (1993), all federal courts in the Ninth Circuit and the Ninth Circuit of the U.S. Courts of Appeals.

KRISTIN J. MOODY



Kristin J. Moody is a partner in the firm's San Francisco office, where she focuses her practice on securities litigation. She has successfully litigated numerous class actions that have resulted in substantial settlements for defrauded investors.

Currently, Ms. Moody serves as one of the lead partners for the team prosecuting *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-cv-07142-HSG (N.D. Cal.), a securities class action against Aqua Metals, Inc. and certain of its former executives. The case alleges that the defendants engaged in a widespread fraud to mislead investors about, among other things, the implementation and operations of the Company's purportedly proven AquaRefining technology that would supposedly revolutionize the \$22 billion lead acid battery recycling business. The case recently settled for \$7 million, pending court approval. Ms. Moody is lead partner for the team prosecuting *Oklahoma Police Pension & Retirement System v. Sterling Bancorp, Inc, et al.*, No. 5:20-cv-10490-JEL-EAS (E.D. Mich.), a securities fraud class action lawsuit against Sterling Bancorp, Inc., certain of its current and former officers and directors, and the underwriters for the Company's initial public offering (the "IPO"). The case was brought on behalf of investors who purchased or otherwise acquired Sterling common stock from November 17, 2017 through and including March 17, 2020 (the "Class Period"), including shares sold in the IPO. Sterling, headquartered in Southfield, Michigan, is the unitary thrift holding company of Sterling Bank and Trust which specializes in residential mortgages. The case alleges that defendants issued materially untrue and misleading statements concerning, *inter alia*, the Company's loan underwriting, risk management, compliance and internal controls, including regarding the Company's Advantage Loan Program, the Company's largest lending program which the Company completely shut down by the end of the Class Period. The case reached a settlement of \$12.5 million, which was approved by the court on September 23, 2021. Ms. Moody also represented lead plaintiff in *In re Zynga, Inc. Securities Litigation*, where she investigated and drafted the complaint and successful opposition to the motion to dismiss, conducted discovery, and participated in mediation. The case reached a settlement of \$23 million. Ms. Moody also investigated and drafted the consolidated amended complaint in a class action against General Electric Co., certain of its officers and directors, and underwriters of its public offering; drafted lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court; and conducted discovery in the matter. The case settled for \$40 million. Further, Ms. Moody assisted in the litigation of *In re BP p.l.c. Securities Litigation*, where she helped draft the amended complaint and the successful opposition to defendants' motion to dismiss. BP and Lead Plaintiffs for the "post-explosion" class reached a settlement in the amount of \$175 million.

Ms. Moody also served as lead partner for the firm in *McLaughlin v. Wells Fargo Bank, N.A.*, No. 3:15-cv-02904-WHA (N.D. Cal.), which achieved a precedent-setting opinion holding that Wells Fargo Bank, NA is required under the Truth in Lending Act ("TILA") to indicate the amount of property insurance proceeds held by the bank on plaintiff customer's payoff statement. The litigation ultimately attained a settlement which provided \$880,000 to the damages class (more than \$2,900 for each damages class member), which is 88% of the total maximum statutory damages that could have been recovered if fully litigated. The settlement also requires Wells Fargo to disclose insurance claim funds on all of its payoff statements going forward, which is a benefit beyond what could have been achieved at trial. Ms. Moody also managed litigation, coordinated and conducted discovery, counseled clients, and participated in mediation in *In re*

Force Protection Securities Litigation, which settled for \$24 million. Ms. Moody further coordinated and conducted discovery, counseled the client, and participated in mediation in litigation against International Rectifier Corp. and several of its former officers and directors for an alleged fraud at a foreign subsidiary, which settled for \$90 million. In addition, Ms. Moody participated in the motion to dismiss briefing and mediation in *In re American Home Mortgage Securities Litigation*, which settled for \$37.25 million, despite the difficulties American Home's bankruptcy posed to asset recovery.

Prior to joining Berman Tabacco, Ms. Moody practiced at Holland & Knight, LLP in Boston and Morrison & Foerster, LLP in San Francisco. While at Morrison & Foerster, Ms. Moody represented clients in complex commercial litigation matters with a focus on securities litigation. At Holland & Knight, she represented clients in a range of white-collar criminal matters, government and regulatory investigations, and complex civil litigation, including securities litigation. Ms. Moody has also represented clients in a number of *pro bono* matters, including discrimination and political asylum cases.

Ms. Moody has published several articles in the areas of accounting fraud, securities class actions, and derivative suits. She has also taught business law courses at Fisher College and previously sat on the Fisher College Advisory Board. Ms. Moody has also served as an Advisory Board member for the non-profit Generation Citizen.

Ms. Moody was selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine (2020-2021) and was included in *San Francisco Magazine's Top Women Attorneys in Northern California* (2020). She was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). Ms. Moody earned an LL.M. from New York University School of Law in 2003, a J.D., *cum laude*, from Boston College Law School in 1999, and a B.A., *cum laude*, in English and Legal Studies from Bucknell University in 1995. While in law school, she was Notes and Comments Editor of the Boston College International and Comparative Law Review and was active in the Women's Law Center.

Ms. Moody is a member in good standing of the state bars of Massachusetts and California and is also admitted to practice in the U.S District Court for the Northern, Central, Eastern and Southern Districts of California, the U.S. District Court for the District of Massachusetts, the Eastern District of Michigan, and the U.S. Courts of Appeals for the First, Third, Ninth, and Federal Circuits.

NATHANIEL L. ORENSTEIN



A partner in the firm's Boston office, Nathaniel L. Orenstein focuses his practice on securities and antitrust litigation. He is currently engaged in a number of matters to ensure that corporate directors' meet their fiduciary obligations to their shareholders. Most recently, Mr. Orenstein successfully prosecuted in *Norfolk County Retirement System v. David D. Smith*, Civ. No. 1:18-cv-03952 (D. Md.) a case concerning a merger between Sinclair Broadcast Group and Tribune Media Company that was blocked by the U.S. Department of Justice ("DOJ") and the U.S. Federal Communications Commission ("FCC") because Sinclair proposed "sham" divestiture transactions to the FCC and "engaged in misrepresentation and/or lack of candor" with respect to those

related party transactions. The settlement provided far-reaching benefits to Sinclair and its shareholders, including substantial corporate governance reforms, comprised of, among other things, the creation of two new board committees, along with nearly \$25 million in financial recovery – including a rare \$5 million personal contribution from Sinclair's controlling shareholder. In approving the settlement, the Court noted that “[i]n this case, plaintiffs' counsel secured an excellent settlement that includes significant corporate governance reforms that would not have resulted from a trial on the merits.” Mr. Orenstein's representative cases also include: *In re Bluegreen Corporation Shareholder Litigation*, No. 502011CA018111 (15th Judicial Cir., Florida) (\$36.5 million settlement and \$80 million in benefit to class secured to date as member of Executive Committee); *In re TPC Group, Inc. Shareholders' Litigation*, No. 7865-VCN (Delaware Chancery) (\$79 million benefit to class while co-lead counsel); *Louisiana Municipal Police Employees' Retirement System v. EnergySolutions, Inc.*, C.A. No. 8350-VCG (Delaware Chancery) (\$36 million benefit to class as co-lead counsel); *In re El Paso Corporation Shareholder Litigation*, No. 6949-CS (Delaware Chancery) (\$110 million benefit to class as member of Executive Committee); *In re American Home Mortgage Securities Litigation*, No. 07-MD-1898 (E.D.N.Y.) (\$37.25 million benefit to class as member of litigation team); *In re Force Protection Inc. Securities Litigation*, No. 2:08-cv-845 CWH (D.S.C.) (\$24 million benefit to class as member of litigation team); and *In Re: Nexium (Esomeprazole) Antitrust Litigation*, No. 12-md-02409-WGY (D. Mass.) (\$24 million benefit to class secured to date as local counsel).

Prior to joining Berman Tabacco, Mr. Orenstein was a staff attorney for the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts. While there, he performed company examinations as well as investigated and pursued enforcement actions to detect and prevent fraud at hedge funds and related companies. Mr. Orenstein was the lead attorney on many investigations and actions against broker-dealers, investment advisors and others.

Prior to obtaining his J.D. from the New York University School of Law in 2005, Mr. Orenstein served as a member of the mutual fund and insurance brokerage investigation teams for the Office of the New York State Attorney General's Investment Protection Bureau. As a legal intern, he assisted with the Bureau's investigation work including, case planning, discovery and settlement negotiation.

In addition to his work for the Commonwealth and for New York State, Mr. Orenstein was the Associate Director for the Center for Insurance Research, a consumer advocacy organization. In this role, he supported Center attorneys in litigating complex insurance reorganization transactions. He also testified in regulatory and legislative proceedings on behalf of policyholders concerning market conduct and insurance rate setting.

Benchmark Litigation has ranked Mr. Orenstein as a *Massachusetts Future Star* (2021-2022) and *Massachusetts Super Lawyers Magazine* named him a *Super Lawyer* (2020-2021) and a *Rising Star* (2014-2015).

Mr. Orenstein is admitted to practice law in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the U.S. Court of Appeals for the First Circuit.

MATTHEW D. PEARSON



A partner in the firm's San Francisco office, Matthew D. Pearson focuses his practice on securities, antitrust and consumer protection litigation. Mr. Pearson is an integral member of the firm's New Case Investigations Team and devotes a substantial amount of his time to evaluating and investigating potential new cases. Mr. Pearson also monitors foreign securities litigation, tracks developments in foreign class action and securities law, and assists clients interested in litigating abroad.

Since joining the firm in 2005, Mr. Pearson has served in key roles on a number of the firm's leading securities and antitrust cases. On the securities side, Mr. Pearson was part of the litigation team in *In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation*, Master File No. 08-MDL No. 1963 (S.D.N.Y.), which resulted in settlements totaling \$294.9 million for aggrieved investors.

In his antitrust practice, Mr. Pearson was a prominent member of the firm's team leading the *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. 03-md-1532 (D. Me.), involving allegations that major automakers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States. Mr. Pearson was involved in all aspects of this nationwide, multi-jurisdictional litigation, including discovery, class certification, extensive expert reports, summary judgment, appeals in multiple courts, and settlement. The federal case ended in 2009. Mr. Pearson currently represents car buyers in a related litigation in California state court, captioned *In re Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303 (San Francisco Superior Court), which continues against one remaining automaker defendant. To date, the firm has achieved settlements totaling over \$55 million for class members in the federal and California actions.

Mr. Pearson also assisted in the firm's efforts to achieve a historic \$295 million settlement with De Beers, where the firm represented a class of diamond resellers alleging De Beers unlawfully monopolized the worldwide supply of diamonds. The settlement was significant because, in addition to the \$295 million cash payment, the settlement included an agreement by De Beers to submit to the jurisdiction of the U.S. court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. The firm's work in this case – believed to be the first successful prosecution of De Beers under U.S. antitrust laws – serves as a template for corralling foreign monopolists.

Mr. Pearson co-authored an amicus brief submitted to the California Supreme Court on behalf of three unions in the Kwikset case, involving products falsely labeled as "Made in the USA." The California Supreme Court's ultimate opinion (*Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011)), was highly favorable to our clients' interests and became one of the leading opinions regarding standing under California's Unfair Competition Law.

In 2021, Mr. Pearson was selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine. He received his law degree in 2004 from the University of California, Davis, School of Law, where he completed the King Hall Public Service Law Program. He completed his undergraduate studies at the University of

California, Los Angeles, earning a Bachelor of Arts in Political Science, with an International Relations concentration.

Mr. Pearson is admitted to practice law in the State of California, the United States District Courts for the Northern, Central and Southern Districts of California, and the United States District Court for the District of Colorado.

TODD A. SEAVER



A partner in the San Francisco office, Todd A. Seaver litigates both antitrust and investment-related matters, with a primary focus on developing and litigating antitrust cases. He has led the day-to-day management of one of the largest antitrust class actions in history, and has litigated antitrust cases involving varied industries of high-tech, pharmaceuticals, autos, chemicals, consumer electronics, biotech, diamonds and online retailing. He is a leader of the firm's antitrust practice group, marshalling the firm's extensive investigative resources and then litigating the cases.

Currently, Mr. Seaver is co-lead counsel for consumer plaintiffs in an antitrust class action against American Express, *Oliver v. American Express Co.*, No. 1:19-cv-00566-NGG (E.D.N.Y.). The action is at the forefront of the payments industry and is now shaped by the landmark ruling in *Ohio v. American Express Co.*, 138 S. Ct. 2274 (2018), in which the U.S. Supreme Court articulated a new analytical framework for so-called "two-sided" markets.

Mr. Seaver is also presently counsel for plaintiffs and represents California State Teachers' Retirement System (CalSTRS) in the Euribor (*Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)) and Yen Libor (*Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.)) antitrust cases involving Wall Street banks' manipulation of interest rate benchmarks and bid-ask spread price fixing on interest rate derivatives. He also currently represents Orange County Employees' Retirement System (OCERS) in an ongoing antitrust class action (*Dennis v. JP Morgan Chase & Co.*, No. 16-cv-06496-LAK (S.D.N.Y.)) alleging that U.S., European, and Australian banks manipulated the interest rate benchmark used to price derivatives that were denominated in Australian dollars and sold to U.S. investors. He also currently represents Fresno County Employees' Retirement Association (FCERA) in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789 (S.D.N.Y.), an antitrust class action against Wall Street banks for manipulating a foreign currency exchange rate benchmark and fixing bid-ask spreads on trillions of dollars of foreign currency exchange transactions.

He also leads plaintiffs' efforts in *In re New Motor Vehicles Canadian Export Antitrust Litigation*, in which Berman Tabacco is lead counsel. The case alleges that major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The case has partially settled with Toyota Motor Sales U.S.A. for \$35 million and with General Motors of Canada for \$20.15 million. The litigation is ongoing in California state court, with the California Court of Appeal having recently reversed the trial court's grant of summary judgment in favor of defendant Ford Canada.

Mr. Seaver recently had a leading role in several cases, including, *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), where the firm was co-lead counsel for direct purchaser plaintiffs. Settlements were reached totaling \$139.3 million for the direct purchaser class (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries were used and which the defendants sold. Mr. Seaver argued and defeated motions to dismiss and deposed fact witnesses and defendants' expert economist and made the oral argument in opposition to defendants' *Daubert* motions to exclude plaintiffs' expert economist's opinions at class certification.

Mr. Seaver led efforts for the firm in an action against Netflix and Wal-Mart, *In re Online DVD Rental Antitrust Litigation*, in which Berman Tabacco was among lead counsel. He was responsible for managing many aspects of discovery, class certification and summary judgment, as well as for achieving partial settlement with defendant Wal-Mart. He successfully argued in Ninth Circuit Court of Appeals for that case on an issue of first impression regarding the Class Action Fairness Act and settlements involving a mix of cash consideration and electronic store gift cards. He was also one of the lead counsel in *In re Optical Disk Drive Antitrust Litigation* and also worked on a number of the firm's high-profile cases including *Cardizem CD*, still the leading generic drug competition case, which settled in 2003 for \$80 million. In the Cardizem CD case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a per se unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

Mr. Seaver spearheaded the landmark case against the major credit rating agencies (Standard & Poor's and Moody's), *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System (CalPERS), was groundbreaking litigation that held the rating agencies financially responsible for negligent misrepresentations in rating structured investment vehicles. Moody's and Standard & Poor's agreed to pay a total of \$255 million (\$130 million and \$125 million, respectively) to settle CalPERS' claim that "Aaa" ratings on three SIVs were negligent misrepresentations under California law. This case was groundbreaking in that (i) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages; and (ii) it resulted in a published appellate court opinion finding that rating agencies can, contrary to decades of jurisprudence, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

Mr. Seaver was previously associated with the law firm Devine, Millimet & Branch, P.A., where he practiced commercial litigation. He was an adjunct Professor of Law with the New England School of Law in 2003, teaching Appellate Advocacy.

Mr. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999.

While in law school, Mr. Seaver served as a law clerk at the Federal Trade Commission's Bureau of Competition and as a judicial extern for the Honorable Ricardo M. Urbina, U.S. District Court for the District of Columbia.

Mr. Seaver was ranked by *The Legal 500* as a Recommended Attorney in *Securities Litigation* (2017-2018) and *Antitrust* (2019-2021), which noted in the 2020 release that Mr. Seaver "displays deep knowledge of specialized finance." He was also named a Super Lawyer by *Northern California Super Lawyers Magazine* (2017-2020), and has been recognized by *Global Competition Review's Who's Who Legal: Competition* (2017-2019). *Who's Who Legal* has also named Mr. Seaver a Thought Leader in Competition (2019-2020). He was also ranked by *Benchmark Litigation* as a *California Litigation Star* (2022), *Local Litigation Star* (2019-2020, 2022), *California Future Star* (2020-2021), and *Noted Star* (2019-2021) in *Plaintiff Work and Securities*. He was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). He has been admitted to practice law in the states of California, Massachusetts, and New Hampshire. He is also a member of the American Bar Association's Antitrust Section and served a two-year term as a Director for the San Francisco Bar Association's Antitrust Committee in 2012-2013.

LESLIE R. STERN



A partner in Boston, Leslie R. Stern heads the New Case Investigations Team for institutional clients. The team investigates possible securities law violations, gauging clients' damages and evaluating the merits of cases to determine the best course of legal action.

In her role with the New Case Investigations Team, Ms. Stern oversees a portfolio monitoring program that combines the power of an online loss calculation system with the hands-on work of a dedicated group of attorneys, investigators and financial analysts. Her case development duties include preparing detailed case analyses and recommendations, and advising clients on their legal options.

Ms. Stern is a seasoned litigator with more than a decade of experience on cases such as *Carlson v. Xerox Corp.*, in which Berman Tabacco represented the Louisiana State Employees' Retirement System as co-lead counsel. Upon approval in January 2009, the \$750 million Xerox settlement ranked as the 10th largest securities class action recovery of all time. Ms. Stern also worked extensively on *In re Bristol Myers-Squibb Securities Litigation*, which settled for \$300 million. As part of the litigation team in *Giarraputo v. UNUMProvident Corp.*, No. 2:99cv00301 (D. Me.), Ms. Stern helped secure a \$45 million settlement in a lawsuit stemming from the merger that created UNUMProvident. She also has experience prosecuting derivative actions. She was a member of the litigation team in a derivative suit brought against the directors of Oxford Health Plans Inc. As co-lead counsel in the case, Ms. Stern and the Firm represented individual investors seeking to recover damages sustained by the company because of its directors' breaches of their fiduciary duties, gross mismanagement, corporate waste of assets and breach of duty of loyalty with respect to self-dealing stock transactions. Ms. Stern has also served on several trial teams, including *In re Biogen Sec. Litig.*, No. 94-cv-12177 (D. Mass.), and *In re Zila Inc. Sec. Litig.*, No. 99-cv-00115 (D. Ariz.), which settled during trial preparation. Ms. Stern was also one of the attorneys representing a Firm client in a class action against numerous financial institutions alleging that ten of the world's largest banks conspired to fix

the prices of unsecured bonds issued by the government-sponsored agencies familiarly known as Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"). *City of Birmingham Retirement & Relief System, et al. v. Bank of America, N.A., et. al.*, No. 1:19-cv-01704-JSR (S.D.N.Y.). The case settled for \$386.5 million. Currently Ms. Stern is also overseeing several breach of fiduciary duty actions.

Prior to joining Berman Tabacco in 1998 and being named partner in 2003, Ms. Stern practiced general civil litigation. She earned a B.S. degree in Finance from American University in 1991 and graduated *cum laude* from Suffolk University Law School in 1995.

While at Suffolk, Ms. Stern served on the Suffolk University Law Review's editorial board and authored three publications.

Ms. Stern has been admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court for the District of Massachusetts. She has also been admitted to practice in the First and Fourth Circuits of the U.S. Courts of Appeals. Ms. Stern is a member of both the National Association of Public Pension Attorneys and the National Association of Women Lawyers. Ms. Stern was designated a *Local Litigation Star* by *Benchmark Litigation* in 2013-2015 and 2021-2022 and was recognized among the *Benchmark Plaintiff Top 150 Women in Litigation*. She was also ranked as a *Recommended Attorney* in *Securities Litigation* by *The Legal 500* (2017-2021). She was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021).

JOSEPH J. TABACCO, JR.



Joseph J. Tabacco, Jr., the founding member of Berman Tabacco's San Francisco office and member of the firm's Executive Committee, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *United States v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litigation* (settled after jury empaneled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Securities Litigation* (settled after six months of trial) and *In re Ramtek Securities Litigation*.

Mr. Tabacco currently oversees the firm's class action litigation teams in the firm's price-fixing/market manipulation cases alleging that major banks colluded to fix the prices of derivatives and other financial

instruments by manipulating numerous financial benchmark rates. This includes representing California State Teachers' Retirement System, one of the country's largest public pension funds, in (i) *Sullivan v. Barclays PLC et al.*, No. 13-cv-2811 (S.D.N.Y.), a class action against numerous Wall Street banks for price-fixing financial instruments tied to the Euro Interbank Offered Rate (the "Euribor"), which has total approved settlements in the amount of \$491.5 million; and (ii) *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.), two related class actions against numerous financial institutions for price-fixing financial instruments tied to the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and the Euroyen Tokyo Interbank Offered Rate ("TIBOR"), which have total approved settlements in the amount of \$307 million.

Mr. Tabacco was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He also oversaw *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.), the pioneering case that held credit rating agencies (Standard & Poor's and Moody's) financially responsible for their negligence in rating structured investment vehicles. After settling with both McGraw Hill Companies and Moody's, California Public Employees' Retirement System' total recovery for the case was \$255 million. Over the decades, Mr. Tabacco has prosecuted numerous securities fraud and antitrust cases against both domestic and international companies.

Mr. Tabacco recently oversaw *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), which achieved settlements in the total amount of \$139.3 million for a class of direct purchasers of lithium-ion rechargeable batteries (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries are used and which the defendants sell.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly traded company internet retailer. He is Chair of the Board's Nominating & Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He has also served as a member of the American Antitrust Institute Advisory Board since 2008. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law and the Advisory Board of the Center for Law, Economics & Finance at the George Washington School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

For 15 consecutive years, he has been among the top U.S. securities litigators ranked by *Chambers USA* (2007-2021) and is also AV Preeminent® rated by *Martindale-Hubbell®*. Mr. Tabacco has been featured by the *Daily Journal* as one of the *Top Antitrust Lawyers in California* in 2020, as one of the *Top Plaintiffs Lawyers in California* in 2017, and as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars. He was also recognized by *Global Competition Review's Who's Who Legal: Competition*, most recently in 2019 – a designation he has received for the past 6 years since the

creation of the publication's Plaintiffs section. Additionally, for 17 consecutive years, Mr. Tabacco has been named a *Super Lawyer* by *Northern California Super Lawyers Magazine*, which features the top 5% of attorneys in the region (2004-2020). Additionally, in 2019 and 2020, Mr. Tabacco was ranked in the *Top 100 list* of attorneys in California in the *Northern California Super Lawyers Magazine*. He has been ranked by *The Legal 500* as a *Recommended Attorney* in *Securities Litigation* (2017-2019, 2021) and *Antitrust* (2019-2021) and was ranked by *Benchmark Litigation* as a *California State Litigation Star* (2019-2022), *San Francisco Local Litigation Star* (2017-2022), *Noted Star* in *Plaintiff Work* (2020-2021), and *Noted Star* in *Antitrust, Intellectual Property, and Securities* (2019-2020). *Journal. The Best Lawyers in America*® recognized Joe as *Lawyer of the Year* in *Litigation-Securities* for 2022. He has further been recognized by *The Best Lawyers in America*® for *Litigation-Antitrust* (2018-2022) and for *Litigation-Securities* (2019-2022). He was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). Mr. Tabacco has also been singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar." In 2019, *Chambers USA* hailed Mr. Tabacco as "a formidable plaintiff-side litigator, with a wealth of experience handling securities class actions. A market source describes him as 'a master of orchestrating lawsuits and striking settlements,' adding: 'He strikes fear in the heart of defendants.'" *Chambers* has previously noted a client's praise for Mr. Tabacco: "His legal knowledge and skills are at the highest level. His combined intelligence and experience results in well-reasoned and thoughtful arguments to further our case."

Mr. Tabacco has been admitted to practice law in the states of California, Massachusetts, New York and the District of Columbia (currently inactive).

BRYAN A. WOOD



A partner in Boston, Bryan A. Wood focuses his practice on securities and whistleblower litigation. Mr. Wood has worked on numerous securities cases on behalf of the firm's public pension fund clients including *In re BP, plc Securities Litigation*, No. 10-md-2185 (S.D. Tex.); *City of Brockton Retirement System v. Avon Products Inc.*, No. 11-cv-04665 (S.D.N.Y.), *In re Par Pharmaceutical Securities Litigation*, No. 06-cv-03226 (D.N.J.); *Dunst v. Hyundai Motor America*, No. 3:13-cv-00069 (W.D.N.C.) and *Carlson v. Xerox Corp.*, No. 00-cv-1621 (D. Conn.).

Mr. Wood joined Berman Tabacco as an associate in 2002 and became a partner in 2009. Prior to joining the firm, Mr. Wood was a litigation associate at both Montgomery, McCracken, Walker & Rhoads, LLP in Philadelphia and Schnader Harrison Segal & Lewis in Boston. As an associate at those firms, he represented corporations and directors in shareholder and other class action lawsuits. He also represented businesses and municipalities in general contract and employment discrimination cases.

Mr. Wood graduated *cum laude* from the University of Massachusetts in 1991 with a B.A. in Sociology. In 1995, he earned an M.S. *summa cum laude* in Public Policy from the Eagleton Institute of Politics at Rutgers University and graduated *cum laude* from the Temple University Beasley School of Law in 1998. While in law school, he was the Managing Editor of the *Temple Law Review* and a board member of the Temple Law Moot Court Honor Society. In addition, Mr. Wood completed a one-year internship for the Honorable Edward R. Becker, then Chief Judge for the U.S. Court of Appeals for the Third Circuit. Mr. Wood was

designated a *Local Litigation Star* by *Benchmark Litigation* in 2013-2015 and 2021-2022 and, in 2020-2021, *Massachusetts Super Lawyers* magazine named him a *Super Lawyer* in recognition of his expertise and work in securities litigation. He was previously named a *Rising Star* by *Massachusetts Super Lawyers* magazine in 2007.

Mr. Wood is admitted to practice law in the Commonwealths of Massachusetts and Pennsylvania, as well as the New York State Supreme Court, Appellate Division, First Department. He is also admitted to the U.S. District Courts for the Districts of Massachusetts, Colorado and Eastern Pennsylvania, as well as the U.S. Court of Appeals for the First, Second and Ninth Circuits. Additionally, Mr. Wood is a member of the Boston Bar Association and the American Bar Association.

Associates

COLLEEN CLEARY



Colleen Cleary is an associate at the San Francisco office of Berman Tabacco, who focuses her practice on antitrust litigation. Ms. Cleary joined the firm in 2018 after working as a class action litigator in the Bay Area primarily representing consumers harmed by anticompetitive conduct.

Ms. Cleary earned her Juris Doctorate degree from the University of San Francisco's School of Law, and concurrently earned a Master's in Business Administration from the University of San Francisco's School of Management. During law school, she was awarded the Best Oral Advocate Award in the school's annual moot court competition, served as a member of the National Moot Court Competition team, and earned a Business Honors Certificate upon graduation. In addition, Ms. Cleary was recognized with the CALI Excellence for the Future Award in European Union Economic Law and was a member of the *University of San Francisco Law Review*.

While in law school, Ms. Cleary gained experience prosecuting antitrust cases. She worked at the Federal Trade Commission, investigating anticompetitive civil mergers in the health care industry, and the Department of Justice's Antitrust Division, assisting in the prosecution of criminal price-fixing conspiracies.

Ms. Cleary earned a B.A. in English Literature from the University of San Francisco in 2010.

Ms. Cleary is admitted to practice in the State of California and the U.S. District Court for the Northern District of California.

Ms. Cleary was recognized in *The Best Lawyers in America*® for *Mass Tort Litigation / Class Actions – Plaintiffs* (2021-2022).

STEVEN L. GROOPMAN



Steven L. Groopman is an associate in the firm's Boston office who focuses his practice on securities, RICO, and ERISA litigation. Currently, Mr. Groopman is a key member of the litigation team currently prosecuting federal RICO class actions against the operators and financial backers of allegedly unlawful online lending schemes that attempt to circumvent federal and state law through sham relationships with Native American tribes. *Solomon, et al. v. American Web Loan, Inc., et al.*, No. 17-cv-145 (E.D. Va.), *Gingras, et al. v. Victory Park Capital Advisors, LLC, et al.*, No. 17-cv-00233 (D. Vt.) and *Gingras, et al. v. Rosette, et al.*, No. 15-cv-101 (D. Vt.). He is also a key member of the litigation team in *In re EpiPen ERISA Litigation*, No. 17-CV-1884 (PAM/SER) (D. Minn.), representing a class of EpiPen purchasers that have sued major pharmacy benefit managers ("PBMs") over the massive price increases of the EpiPen and alleging the PBMs breached their fiduciary duties under ERISA.

Mr. Groopman joined Berman Tabacco in June 2015 after serving as a law clerk to the Honorable Dickinson R. Debevoise, on the U.S. District Court for the District of New Jersey, and working as an associate at a New York law firm.

Massachusetts Super Lawyers Magazine named Mr. Groopman a *Rising Star* in 2017-2021. Mr. Groopman received an A.B. in Political Science *magna cum laude* from Brown University in 2005. In 2009 he graduated from George Washington University Law School.

Mr. Groopman is admitted to practice law in the States of New York and Massachusetts, the U.S. District Courts for the Southern District of New York, the Eastern District of New York and the District of Massachusetts.

JEFFREY MILES

Jeffrey J. Miles is an associate in the San Francisco office of Berman Tabacco. Mr. Miles applies seven years of successful complex civil litigation experience to the pursuit of financial justice for individuals and organizations who have fallen victim to fraud or other financial malfeasance. Mr. Miles focuses his practice on securities and antitrust litigation.

Before joining Berman Tabacco, Mr. Miles practiced as a litigation associate at two large, prestigious international law firms in the United States, and at a highly-regarded Los Angeles litigation boutique. Mr. Miles' successes in complex civil litigation include a global dispute on behalf of the world's largest manufacturer of computer chips and a high-profile trade secret dispute regarding autonomous vehicle technology in the Northern District of California. Mr. Miles also had the honor of serving as counsel for such clients as the Academy of Motion Picture Arts and Sciences and one of the world's foremost private art foundations.

Mr. Miles clerked for the Honorable Judge Vanessa D. Gilmore in the Southern District of Texas and also served in the U.S. Department of Justice Honors Program. Mr. Miles is admitted to practice in California as well as before the Northern, Central, and Eastern Districts of California.

Mr. Miles serves on the Executive Committee of the Barristers Intellectual Property and Internet Law Section of the San Francisco Bar Association.

Mr. Miles was named a *Rising Star* by *Northern California Super Lawyers* magazine (2021). He is admitted to practice law in the State of California and the U.S. District Courts for the Northern, Central, and Eastern Districts of California.

A. CHOWNING POPPLER



Chowning Poppler focuses her practice on securities, derivative, and consumer litigation. Some of Ms. Poppler's representative cases include *Carlin v. DairyAmerica*, No. 09-cv-00430 (E.D. Cal.), *In re Aegean Marine Petroleum Network Inc. Securities Litigation*, No. 1:18-cv-04993 (S.D.N.Y.), *In re Alphabet, Inc. Shareholder Derivative Litigation*, No. 19-cv-341522 (Santa Clara Superior Court), and *Teamsters Local 443 Health Services and Insurance Plan v. John G. Chou, et al.*, C.A. No. 2019-0816-SG (Del. Ch.). She also has experience advising and working with public pension funds in complex litigation and discovery matters.

Prior to joining the firm in 2015, Ms. Poppler established her practice as a class action litigator at a San Francisco law firm representing workers in employment-related matters in state and federal court.

Ms. Poppler graduated from the University of Southern California with a Bachelor of Arts degree in Political Science and Social Science-Economics. She received her Juris Doctor from the University of San Diego School of Law in 2010, where she was a member of the *San Diego International Law Journal*. While in law school, Ms. Poppler interned at the Public Integrity Bureau of the State of New York Office of the Attorney General where she investigated alleged corruption and fraud in local governments. She also oversaw and coordinated volunteers to assist tenants facing eviction, while serving on her law school's Pro Bono Legal Advocates board. Ms. Poppler's commitment to social justice is ongoing; she has served on the board of the ACLU of Northern California since 2018.

Staying current on trends in the securities arena has further strengthened Ms. Poppler's practice. She is co-author of several articles, including *The Currency of Capitalism with a Social Conscience* (June 2018) and *Snap Judgment – S&P Dow Jones and FTSE Russell Indices Ensure that Investors Retain Voting Rights* (October 2017), both of which were published in *Financier Worldwide Magazine*.

Northern California Super Lawyers magazine named Ms. Poppler a Rising Star in 2017-2021. She was also included in *San Francisco Magazine's Top Women Attorneys in Northern California* in 2017-2020. She was also recognized in *The Best Lawyers in America®* for *Mass Tort Litigation / Class Actions – Plaintiffs* (2021-).

2022) and *Northern California Best Lawyers* under *Ones To Watch for Mass Tort Litigation / Class Actions – Plaintiffs* (2021).

Ms. Poppler is admitted to practice law in the State of California and the U.S. District Courts for the Northern, Central, and Eastern Districts of California, as well as the U.S. Court of Appeals for the Ninth Circuit.

JEFF ROCHA



Jeff Rocha is an associate in Berman Tabacco's San Francisco office, handling matters in the area of securities litigation. Prior to joining the firm in 2019, Mr. Rocha focused his practice on commercial litigation in the areas of corporate and healthcare fraud, unfair business practices, professional liability, consumer protection, and employment and labor law. He enjoys trial experience and has successfully mediated several cases to resolution.

Mr. Rocha also has substantial experience in the prosecution of complex insurance fraud *qui tam* actions. In that capacity, he assisted a legal team responsible for obtaining millions of dollars in civil judgments against individuals and entities involved in widespread criminal conspiracies.

Mr. Rocha attended law school at the University of San Francisco, where he graduated *cum laude* and received a business law certificate with honors. During his studies, he earned a CALI Award of Excellence for the Future in Contracts and served as a judicial extern for three San Francisco judges, including a federal magistrate at the United States District Court for the Northern District of California.

Before studying law, Mr. Rocha earned a B.S. in Business Administration with a concentration in Corporate Finance from California State University, Fresno. After completing his undergraduate studies, Mr. Rocha worked for a national brokerage firm as a series 7 and 63 licensed senior stockbroker.

Northern California Super Lawyers magazine named Mr. Rocha a *Rising Star* in 2018-2020. He is admitted to practice law in the State of California and the U.S. District Courts for the Northern, Central, and Eastern Districts of California.

M. DALTON RODRIGUEZ

An associate in the firm's Boston office, M. Dalton Rodriguez focuses his practice on securities litigation. Mr. Rodriguez joined Berman Tabacco in 2020 after working as an associate at Ropes & Gray LLP in Boston for more than four years, where he focused on bankruptcy and other complex business litigation, internal investigations related to legal and regulatory compliance, and proceedings before the U.S. Securities and Exchange Commission. He also maintained a substantial pro bono practice focused on issues affecting the LGBTQ community and immigrant rights.

While in law school, Mr. Rodriguez was an editor for the *Stanford Journal of Civil Rights and Civil Liberties* and the *Stanford Journal of Complex Litigation*. He also served as an accounting instructor for Project ReMADE and as social chair for Stanford OutLaw.

Massachusetts Super Lawyers Magazine named Mr. Rodriguez a *Rising Star* in 2021.

Mr. Rodriguez is admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court for the District of Massachusetts.

LINDSEY SILVER

An associate in the firm's Boston office, Lindsey focuses her practice on securities litigation. Ms. Silver joined Berman Tabacco in 2020 after working as an associate at Wilmer Cutler Pickering Hale and Dorr LLP in Boston for more than 7 years, where she also focused primarily on securities litigation, and other complex business litigation. She played a critical role in a variety of high-profile cases on behalf of clients in the financial, pharmaceutical, and biotechnological industries in both state and federal court.

While in law school, Ms. Silver interned with the Hon. Nancy Gertner on the U.S. District Court for the District of Massachusetts and in the Trial Division of the Massachusetts Attorney General's Office. Before law school, Ms. Silver worked as a paralegal at a labor and employment firm in Boston.

Massachusetts Super Lawyers Magazine named Ms. Silver a *Rising Star* in 2021.

Ms. Silver is admitted to practice law in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts, and the U.S. Court of Appeals for the First Circuit.

Of Counsel

JAY ENG



Jay Eng is Of Counsel to the firm. Mr. Eng has over 14 years of experience in securities litigation, including actions brought under the PSLRA, individual and opt-out cases and mergers and acquisition litigation filed on behalf of public pension funds and retail investors. Mr. Eng has been involved in all aspects of the prosecution of such cases, including case evaluation, strategic planning, trial preparation, court appearances, settlement negotiations and jury trials.

Mr. Eng played a key role in several of the firm's most prominent cases. In *In re IndyMac Mortgage-Backed Securities Litigation*, No. 09-Civ. 04583 (S.D.N.Y.), the firm represented the Wyoming State Treasurer and the Wyoming Retirement System and negotiated settlements totaling \$346 million in connection with claims concerning the misrepresentation of IndyMac mortgage loan underwriting practices. In *In re El Paso Securities Litigation*, H-02-2717 (S.D. Tex.), the firm represented the Oklahoma Firefighters Pension & Retirement System against El Paso stemming

from misrepresentations of its natural gas and oil reserves. This case resulted in a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. In *In re Reliant Securities Litigation*, No. 02-cv-1810 (S.D. Tex.), the firm represented the Louisiana Municipal Police Employees' Retirement System against Reliant Energy, and later its subsidiary, Reliant Resources, in connection with accounting improprieties in the energy trading business. The firm negotiated a \$75 million cash settlement from Reliant and its accountant Deloitte & Touche LLP.

Mr. Eng was also on the trial team in *White v. Heartland High-Yield Municipal Bond Fund*, No. 00-C-1388 (E.D. Wis.), which was one of the few cases to go to trial after the passage of the PSLRA. Following three weeks of trial, the firm obtained an \$8.25 million settlement against Heartland's auditor PricewaterhouseCoopers. Mr. Eng also worked on a number of matters on behalf of the firm's public pension fund clients including: *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.) (\$6.13 billion settlement) (Fresno County Employees' Retirement Association); *In re Enterasys Networks, Inc. Securities Litigation*, No. C-02-071-M (D.N.H.) (\$50 million settlement) (Los Angeles County Employees Retirement Association); *In re Sunrise Senior Living, Inc. Securities Litigation*, No. 07-cv-00102 (D.D.C.) (\$13.5 million) (Oklahoma Firefighters Pension & Retirement System); and *In re Buca, Inc. Securities Litigation*, No. 05-cv-1762 (D. Minn.) (\$1.6 million settlement) (West Palm Beach Police Pension Fund). Mr. Eng was a member of the litigation team prosecuting *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco County), against credit ratings agencies based on allegedly negligent misrepresentations regarding the creditworthiness of three structured investment vehicles. The firm achieved settlements totaling \$255 million from Moody's (defendants Moody's Corp. and Moody's Investors' Services, Inc.) and McGraw Hill Companies, Inc. (S&P). The settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages relating to ratings. Mr. Eng also served as counsel for lead plaintiffs in *In re Digital Domain Media Group, Inc. Securities Litigation*, No. 12-14333-CIV (S.D. Fla.), a securities class action stemming from the rapid collapse of the digital production company Digital Domain Media Group, Inc., which filed for bankruptcy less than one year after going public, which settled for \$5.5 million.

Mr. Eng is a member of the state bars of Massachusetts and Florida, the U.S. District Court for the District of Massachusetts, the U.S. District Court for the Southern, Middle and Northern Districts of Florida, the U.S. District Court for the Eastern District of Wisconsin, the U.S. Court of Appeals for the Eighth and Eleventh Circuits, and the United States Supreme Court. He has served as a trial court law clerk in Florida state and federal courts. He is also a member of the Public Investors Arbitration Bar Association and currently serves on the Board of Editors of the PIABA Bar Journal. He was recognized as a *Rising Star* in the 2010 and 2011 editions of *Florida Super Lawyers* magazine and has been awarded a rating of AV Preeminent® by *Martindale-Hubbell*®.

MARC J. GREENSPON



Marc J. Greenspon became Of Counsel to the firm in 2009 and concentrates his practice in the area of antitrust litigation.

Mr. Greenspon, formerly an associate with the firm from 2003 to 2007, worked on significant antitrust, consumer and securities class actions before starting an independent law practice counseling corporate clients. He maintains his independent law practice, which is not affiliated with the firm.

Mr. Greenspon earned an LL.M. in Securities and Financial Regulation from the Georgetown University Law Center in 2003, a J.D. from Nova Southeastern University in 2002 and a B.A. from the State University of New York at Buffalo in 1999. He co-authored *Securities Arbitration: Bankrupt, Bothered & Bewildered*, 7 Stan. J.L. Bus. & Fin. 131 (2002).

Mr. Greenspon is admitted to practice law in Florida and Massachusetts, as well as in the U.S. District Courts for the Southern, Middle and Northern Districts of Florida. Mr. Greenspon is a member of the American Bar Association Section of Antitrust Law and the American Bar Association Committee on Derivatives and Futures Law. In 2012, he was recognized as a *Rising Star* by *Florida Super Lawyers* magazine.

SARAH KHORASANEE MCGRATH



Of counsel in the firm's San Francisco office, Sarah Khorasanee McGrath focuses her practice on antitrust litigation. Ms. McGrath joined Berman Tabacco in 2010 after working as a contract attorney for the Department of Justice, Antitrust Division. Prior to that, she was an attorney volunteer with the City and County of San Francisco Office of the Public Defender and the Eviction Defense Center.

Ms. McGrath earned a B.A. in Communications from the University of California at San Diego in 2002 and a J.D. from the New England School of Law in 2008.

While in law school, Ms. McGrath worked as a judicial extern to the Honorable Eric Taylor, Superior Court of California, County of Los Angeles.

Northern California *Super Lawyers Magazine* named Ms. McGrath a *Rising Star* in 2013-2015 and 2017-2019. She was also included in *San Francisco Magazine's Top Women Attorneys in Northern California* in 2013-2015 and 2017-2019.

Ms. McGrath is the 2020 President of the Federal Bar Association, Northern District of California Chapter (FBA) and was previously the FBA's President-Elect in 2019, Treasurer in 2018, Vice President in 2016-2017 and Co-Chair of their Young Lawyers Division for the Northern District of California from 2013-2015.

She is admitted to practice in the State of California, the U.S. District Court for the Northern and Central Districts of California and the U.S. Court of Appeals for the Ninth Circuit.

ANNE F. O'BERRY



Since joining the firm in 2000, Anne F. O'Berry has specialized in securities class action litigation, helping to achieve substantial recoveries for institutional investors in cases such as IndyMac MBS, El Paso, Lernout & Hauspie, Reliant, International Rectifier, Sykes, WorldCom, Bear Stearns (which settled for \$294.9 million), and the CalPERS Rating Agencies litigation (which settled for \$255 million).

She has also participated in litigating antitrust, consumer protection, and ERISA cases, including Canadian Motor Vehicles, Citrus Canker, AOL

Privacy, Dairy America, EpiPen, LCD Flat Panel, Marine Hose, State Street Bank & Trust, Flushable Wipes, Yen-LIBOR, and the American Web Loan tribal lending litigation.

Ms. O'Berry began her legal career as a commercial litigation associate at the New York firm of Debevoise & Plimpton and thereafter worked in Florida as a staff attorney for a federally funded agency representing indigent death row inmates in post-conviction litigation, as co-director of a non-profit agency representing incarcerated battered women seeking executive clemency, as a central staff attorney at Florida's Fourth District Court of Appeal, as an adjunct professor at St. Thomas University Law School, and as an associate with a boutique firm litigating fair housing, civil rights, and disability rights cases.

Ms. O'Berry has also served on several law-related committees, including as Secretary of the Civil Rights Committee of the Association of the Bar of the City of New York, and as Vice President of the National Lawyers Guild's Southern Region. She is presently a member of the Guild's South Florida chapter and the Guild's Animal Rights Committee.

Ms. O'Berry obtained her B.A. from the University of Pennsylvania in 1983, graduating *summa cum laude* and Phi Beta Kappa, and earned her J.D. from New York University School of Law in 1986, where she was the director of the Women in Prison Project at Riker's Island, a member of the Civil Rights Litigation Clinic, and an Articles Editor on the Annual Survey of American Law, where she published an article on prisoners' rights.

While in law school, Ms. O'Berry interned for Judge Abraham D. Sofaer, U.S. District Court for the Southern District of New York, and for Judge A. Leon Higginbotham, Jr., U.S. Court of Appeals for the Third Circuit.

Following law school, Ms. O'Berry served as a law clerk to Judge Dickinson R. Debevoise, U.S. District Court for the District of New Jersey, and then as a research and teaching associate to Judge Higginbotham, with whom she co-authored: *The 'Law Only As An Enemy': The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia*, 70 N.C. L. Rev. 969 (1992).

Ms. O'Berry is admitted to practice before the New York and Florida Bars, the U.S. District Courts for the Southern and Eastern Districts of New York and the Southern District of Florida, the United States Court of Appeals for the Second Circuit, and the U.S. Supreme Court.

JUSTIN N. SAIF



An *of counsel* attorney in the firm's Boston office, Justin Saif focuses his practice on complex class action litigation. Mr. Saif has litigated securities, RICO, consumer, and ERISA class actions in federal court, successfully recovering hundreds of millions of dollars for aggrieved consumers, shareholders, and institutional investors.

Mr. Saif has been an integral part of the firm's largest cases for more than a decade, and his commitment to the firm's clients has driven significant firm successes. Mr. Saif represented the Massachusetts Pension Reserves

Investment Management Board in *In re Fannie Mae 2008 Securities Litigation*, which alleged that Fannie Mae and two individual defendants made material misrepresentations regarding and failed to disclose (a) that an enormous volume of mortgages on its books were "subprime" and "Alt-A" as defined internally by the company and throughout the industry, and (b) that defendants had inadequate internal controls to manage the significant risks created by the company's purchases of those types of loans. Mr. Saif made crucial contributions to the case, including the drafting of the Second Amended Joint Consolidated Class Action Complaint and the opposition to defendants' motions to dismiss and preparing for and participating in mediation. That case settled for \$170 million.

Mr. Saif played a key role in drafting the consolidated class action complaint and opposition to motion to dismiss in the litigation against The Bear Stearns Companies, Inc. and its auditor, Deloitte & Touche LLP, representing the State of Michigan Retirement Systems. He also oversaw the initial document review team. That case settled for \$294.9 million. Mr. Saif was a key member of the litigation team in *In re Force Protection Securities Litigation*, representing the Laborers' Annuity and Benefit Fund of Chicago. He drafted discovery requests and responses, coordinated electronic document review and analysis, and prepared for mediation. The Force Protection matter settled for \$24 million. Mr. Saif also played a vital part in *In re Par Pharmaceutical Securities Litigation*, representing the Louisiana Municipal Employees Retirement System, including preparing for and participating in a mediation that led to an \$8.1 million settlement.

Mr. Saif is currently litigating the ongoing EpiPen ERISA action on behalf of health plan participants alleging breaches of fiduciary duties by their pharmacy benefit managers.

Prior to joining Berman Tabacco in 2008, Mr. Saif worked as an associate at Foley Hoag LLP in Boston, where he focused on complex civil litigation including securities litigation, U.S. Securities and Exchange Commission enforcement matters, and professional liability matters involving lawyers and accountants.

Mr. Saif earned an A.B. in Psychology from Harvard University in 1999, graduating *cum laude*. In 2004 he earned a J.D. from the University of Chicago. While in law school, he worked at the MacArthur Justice Center, an impact litigation firm and legal clinic focused on reforming the criminal justice system.

Mr. Saif is admitted to practice law in state and federal courts in Massachusetts and the U.S. Court of Appeals for the First Circuit. He is a member of the Boston Bar Association.

JOHN H. SUTTER



John H. Sutter focuses on securities litigation and is a member of the firm's whistleblower practice group. He joined Berman Tabacco as Of Counsel in early 2010 after working with the firm for several years as a contract attorney.

Mr. Sutter has participated in a number of the firm's important cases. He was lead associate on the securities litigation against The Bear Stearns Companies, Inc. and their auditors Deloitte & Touche, LLP arising out of Bear Stearns's collapse which resulted in a \$294.9 million recovery. Mr. Sutter is currently involved in several active whistleblower actions filed with the U.S.

Securities and Exchange Commission. He also drafted investigative memoranda and mediation statements in the *Xerox* litigation, which resulted in a \$750 million recovery for plaintiffs from the company and its auditor, KPMG. He also participated in extensive document review and discovery preparation in the *State Street Bank ERISA* litigation and the *Nortel II* litigation, each of which resulted in a substantial recovery for plaintiffs. He worked on the *General Electric Co.* securities litigation, which settled for \$40 million in 2013.

Before working with Berman Tabacco, Mr. Sutter was both a corporate and litigation associate for two prominent Boston law firms. He also served as an in-house assistant general counsel with Biogen, Inc., focusing in particular on securities and compliance issues.

Mr. Sutter graduated second in a class of nearly 400 from Boston University School of Law, *summa cum laude*, in 1995. He served on the *Boston University Law Review* and was a charter member of the *Phi Delta Phi* Legal Fraternity. He also was a distinguished scholar for all three years and was the recipient of the William L. and Lillian Berger Award for Distinguished Academic Achievement. He graduated from Suffolk University in 1992 with a B.A. in English Literature.

He is admitted to practice law in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit.

Staff Attorneys

MACKLINE BASTIEN



Mackline Bastien joined the firm in 2015 as a staff attorney. Prior to joining Berman Tabacco, Ms. Bastien managed a solo practice in the Boston area where she represented clients in family law, business formation and housing matters. In addition, she represented an individual in a civil dispute as well as a buyer purchasing a business.

Ms. Bastien received her J.D. from Thomas M. Cooley Law School. While in law school, Ms. Bastien completed an externship at Hubbard Law Offices, P.C., in Lansing, Michigan where she assisted the general counsel for the Michigan Association of County Drain Commissioner regarding land-use issues and property rights matters. She is admitted to practice law in the Commonwealth of Massachusetts.

BRIAN J. DRAKE



A staff attorney at the firm's Boston office, Brian Drake focuses his practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Mr. Drake also represents whistleblowers who provide information and assistance to the U.S. Securities and Exchange Commission in connection with their enforcement of the federal securities laws.

Prior to Berman Tabacco, Mr. Drake was a staff attorney at a number of prominent law firms in Washington, D.C. and Boston, where he developed a broad range of expertise, primarily in the areas of anti-trust and tax litigation.

Mr. Drake received his J.D. from the George Washington University Law School. He is admitted to practice law in the state of Virginia and the District of Columbia.

BERNA M. LEE



A staff attorney in the firm's Boston office, Berna Lee joined the firm in 2015, prior to which, Ms. Lee worked as an associate at a number of New York law firms.

Ms. Lee earned a B.A. in English Literature from Dartmouth College. She received her J.D., *cum laude*, from the Georgetown University Law Center, where she served on the *Georgetown Journal of Legal Ethics*, was a member of the Appellate Litigation Clinic and interned for the Honorable Gladys Kessler of the U.S. District Court for the District of Columbia.

Ms. Lee is admitted to practice law in Rhode Island, New York and the U.S. District Courts of the Southern and Eastern Districts of New York.

ELLEE K. MCKIM



A staff attorney in the firm's Boston office, Ellee K. McKim focuses her practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Prior to joining the firm, Ms. McKim served as an associate attorney at a commercial litigation firm in Boston.

At Northeastern University School of Law, Ms. McKim interned for Judge Joyce London Alexander of the United States District Court for the District of Massachusetts. She also served as lawyering fellow for the law school's social justice program.

Ms. McKim is admitted to practice law in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the U.S. Court of Appeals for the First Circuit.

JOHN REARDEN



John Rearden joined the Boston office of Berman Tabacco as a Staff Attorney in 2019. Prior to joining the firm, Mr. Rearden worked as a discovery attorney for several major law firms in the Boston area. Earlier in his career, Mr. Rearden worked as an associate attorney in Southern Florida where he specialized in commercial litigation and consumer securities fraud.

Mr. Rearden earned a B.A. in History from St. Anselm College and his J.D. from Florida Coastal School of Law. While in law school, Mr. Rearden was named as a Dean's Scholar for academically ranking in the top 10% of all students and also received an Award for Academic Excellence in International Law. Mr. Rearden was also a member of the Florida Coastal Law Review.

Mr. Rearden is admitted to practice law in the Commonwealth of Massachusetts and the State of Florida.

Project Attorneys

KAREN DIDRICKSON

Karen Didrickson joined the San Francisco office of Berman Tabacco as a project attorney in 2019. She has over a decade of experience in complex litigation and discovery matters. Ms. Didrickson has worked on a wide range of cases, including antitrust and securities litigation. Ms. Didrickson also has experience as an ERISA attorney at the global human resources consulting firms Mercer and Willis Towers Watson, and the

multinational accounting firm Deloitte. In addition, she was an instructor at Golden Gate University School of Law where she taught a course on employee benefits law, with an emphasis on qualified plans.

Ms. Didrickson earned her B.A. in Political Science from Willamette University in 1982 and her J.D. (1994) and LL.M. (1995 in Taxation) from the Golden Gate University School of Law.

Ms. Didrickson is admitted to practice law in the State of California.

LAURA M. FALARDEAU



A project attorney in the firm's Boston office, Laura M. Falardeau focuses her practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Recently, Ms. Falardeau's cases have involved complex market manipulation brought under the antitrust laws and predatory lending claims under RICO.

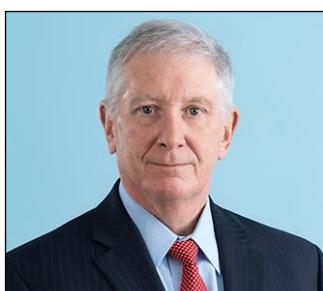
Ms. Falardeau joined the firm in 2011 after working at several major law firms in Boston, primarily in securities litigation. Earlier in her career, Ms. Falardeau served as an associate attorney at a law firm in the Boston area focusing on probate and bankruptcy.

At Northeastern University School of Law, Ms. Falardeau interned for Judge Peter W. Agnes, Jr. of the Massachusetts Superior Court. During law school Ms. Falardeau also represented victims of domestic violence at Greater Boston Legal Services and served as a Hearings Officer at the Boston Public Health Commission.

Ms. Falardeau is admitted to practice law in the Commonwealth of Massachusetts.

Other Key Personnel

JAMES HOUGHTON, SENIOR INVESTIGATOR



James A. Houghton is a Senior Investigator based in our firm's Boston office. A member of the Association of Certified Fraud Examiners, Mr. Houghton works closely with our litigation and investigative teams to conduct complex financial investigations into potential fraud schemes. Mr. Houghton's knowledge and insight has brought a unique handling to the process of uncovering evidence of fraud. Such processes often include obtaining nonpublic information through interviews with former employees at suspect companies and conducting research.

Prior to joining Berman Tabacco, Mr. Houghton was a Special Agent for the Defense Criminal Investigative Service, the Law Enforcement and Investigative arm of the Department of Defense Inspector General's

Office. While there, he gained 18 years' experience directing all aspects of defense and financial fraud investigations. His cases frequently involved investigations of companies with receivable-based loans with banks. Mr. Houghton handled complex and sensitive investigations that led to both fraud and Qui Tam lawsuits, often working jointly with the U.S. Attorney General's Office and other federal agencies, including the Federal Bureau of Investigations. As a result of his investigations, Mr. Houghton has testified regularly in federal courts. Mr. Houghton's skill and expertise have led to him receiving the Department of Justice Award for Public Service on two separate occasions. Mr. Houghton further received the 2018 Investigations award from the Intelligence Community Inspectors General.

Mr. Houghton has also been a Special Agent for Naval Criminal Investigative Service and a Financial Analyst for the Federal Bureau of Investigations. He has received Top Secret and Sensitive Compartmented Information Clearance.

Mr. Houghton earned a B.S. in Business Administration and Accounting from Stonehill College. He also attended the Federal Law Enforcement Training Center for White Collar Crime and Financial Fraud Training, as well as their Criminal Investigator Training Program.

JEANNINE M. SCARSCIOTTI, SENIOR PORTFOLIO ANALYST



Jeannine M. Scarsciotti, the firm's senior portfolio analyst has more than 15 years' experience in providing portfolio monitoring, loss calculation and settlement services to the firm's institutional clients. Ms. Scarsciotti works collaboratively with a team of portfolio analysts to provide clients with comprehensive monitoring services. Her team works closely with the firm's attorneys in refining loss calculations to reflect estimated recoverable damages as opposed to market losses. The portfolio analysts, along with the New Case Investigations Team attorneys, routinely work with damage experts to develop regression analyses and analyze confounding information that will impact an investor's ultimate recoverable damages. Ms. Scarsciotti also devotes a substantial portion of her time offering guidance to the firm's institutional clients in understanding their eligibility in securities class action settlements and helping clients with any custodian bank matters or data reconciliation issues that may arise.

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Our Firm

In 2012, George & Brothers LLP joined forces with Kincaid & Horton LLP to create our new firm. Before the merger, each of the law firms was independently recognized as a premier business and commercial litigation firm, having provided effective and creative litigation and representation for more than thirty years.

Our combined law firm continues the tradition of providing strategic advocacy in effectively resolving disputes, with the efficiency and flexibility that only a boutique firm can bring. Each case is led by a senior lawyer with substantial litigation experience.

Our lawyers are accomplished both as legal advocates and legal scholars. Many of our partners speak regularly, teach, author scholarly legal material, and lead seminars attended by other lawyers who are seeking to advance their own skills. More importantly, our deep knowledge of the law fortifies our approach to effective advocacy in the courtroom. Our attorneys litigate in state and federal courts in Texas, and in other jurisdictions.

A number of our partners have been included in the list of Texas Super Lawyers, including:

- D. Douglas Brothers each year from 2003 through 2020
- B. Russell Horton in 2003, 2004 and 2014 – 2020

Partner Doug Brothers is board-certified in civil trial law by the Texas Board of Legal Specialization. Partner Russ Horton is board-certified in civil trial law and personal injury trial law.

George Brothers Kincaid & Horton LLP is a dynamic law firm that focuses exclusively on litigation. Our partners bring decades of experience to the table in resolving complex, high-stakes problems. We know how to investigate a case and effectively litigate on behalf of our valued clients. Complexity does not deter our lawyers; we know how to pursue victory

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in a wide variety of business and commercial disputes. The interests of our clients are our top priority.

Each named partner has been included in *The Best Lawyers in America*. Doug Brothers is recognized for his work in bet-the-company litigation, commercial litigation and plaintiffs' legal malpractice litigation. Russ Horton is recognized for securities litigation.

George Brothers Kincaid & Horton LLP | Austin, Texas, Litigation Attorneys

To contact us, send us a message using our [online contact form](#) or call our office in Austin at (512) 495-1400. In many types of cases, we prefer compensation arrangements that align our financial interests with those of our clients.

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George Brothers Kincaid & Horton, LLC, is a nationally recognized litigation firm based in Austin, Texas. We proudly represent clients in Travis County and throughout Texas.

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Commercial and Business Litigation

The law firm of George Brothers Kincaid & Horton LLP is a dynamic, boutique commercial and business litigation firm in Austin, Texas. Our size keeps us agile and efficient. A senior lawyer takes a hands-on approach with every case we accept. Our reputation for strategic legal representation is backed by decades of experience, focused on solving legal problems for our valued clients. We represent individuals, businesses of all sizes, nonprofits and others facing complex, high-stakes litigation. GBKH has substantial experience in many aspects of goal-oriented business and commercial litigation, including:

- **Securities litigation** — Churning, conflicts of interest, fraud, market manipulation, omissions of material facts, and risky investments are among the many sources of harm to investors. We rigorously pursue recovery for victims of [securities transaction misconduct](#).
- **Financial fraud litigation** — Misrepresentations, Ponzi schemes, and deceptive inducements to enter into an agreement cause significant financial harm. Litigating these claims requires an experienced attorney who has comprehensive knowledge of the laws governing [civil fraud](#) causes of action.
- **Fiduciary litigation** — A fiduciary is held to a high standard of care. A breach of fiduciary trust does not necessarily require evidence of fraud. Our lawyers represent businesses, partners, corporate officers, trustees, and other individuals and entities embroiled in complex [fiduciary disputes](#).
- **Construction litigation** — Construction defects, contract disputes, and engineering or architectural errors are common problems addressed in residential and commercial [construction disputes](#). Our knowledge of the industry and experience in solving problems are clear strengths of GBKH.
- **Real estate litigation** — Real estate transactions are high-stakes endeavors. We are tenacious in guarding the rights of clients in [real estate litigation](#).
- **Oil and gas litigation** — Fees and royalties related to oil and gas rights are common areas of dispute in Texas. Our industry knowledge and experience in

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dispute resolution are valuable assets in oil and gas law disputes.

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George Brothers Kincaid & Horton, LLC, is a nationally recognized litigation firm based in Austin, Texas. We proudly represent clients in Travis County and throughout Texas.

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GEORGE BROTHERS
KINCAID & HORTON LLP

B. Russell Horton, PARTNER



Phone: 512-495-1482
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Practice Areas Include:

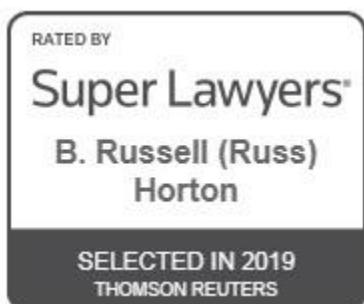
- Commercial and Business Litigation
 - Construction Litigation
 - Fiduciary Litigation
 - Financial Fraud Litigation
 - Real Estate Litigation
 - Securities Litigation
- Intellectual Property Litigation
 - Confidentiality Agreement and Noncompete Agreement Litigation
 - Patent Litigation
 - Trade Secret Litigation
- Professional Liability Litigation
 - Accounting and Auditing Malpractice
 - Architect and Engineering Errors and Omissions
 - Legal Malpractice
- Serious Personal Injury and Wrongful Death

Russ Horton has broad and extensive experience in litigation. His practice includes the representation of companies, partnerships, and individuals in resolving complex commercial, patent, trade secret, antitrust, and securities disputes. Russ's practice includes the representation of both plaintiffs and defendants.

Russ is board-certified in Civil Trial Law and Personal Injury Trial Law. Russ speaks frequently at seminars on trial strategy and advocacy. He has been a member of the District 9A Grievance Council, the American Inns of Court, and the Texas Pattern Jury Charge Committee.

Russ's practice includes trial and appellate matters in state and federal courts throughout Texas. In addition, Mr. Horton is often asked to advise businesses and individuals in dealing with existing or potential disputes.

Russ has been recognized for his skill and integrity, receiving the highest rating from his peers. Russ's colleagues have given him an AV® Preeminent (5.0) rating in the Martindale-Hubbell Law Directory, the highest rating for competence and ethics. (AV® and AV Preeminent® are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies.) He was named Lawyer of the Year for Securities Litigation in Austin, TX by *The Best Lawyers in America*® for 2017 and 2019. Russ also was selected for inclusion in *Texas Super Lawyers*® in 2003-2004 and 2014 – 2018 and in *The Best Lawyers in America*® in 2014-2019. He was honored by *Texas Lawyer* magazine for obtaining a Top Texas Verdict in 2011.



EDUCATION

- Bachelor of Arts in Music, magna cum laude, Houston Baptist University (1983)
- Juris Doctor, University of Texas School of Law (1986)

PROFESSIONAL EXPERIENCE

- Partner, George Brothers Kincaid & Horton, LLP (2012-present)
- Partner, Kincaid & Horton LLP (1997-2012)
- Partner, Herman, Bullion, Howry & Horton (1995-1996)
- Partner, Brown, McCarroll & Oaks Hartline (1992-1994)
- Associate, Brown, McCarroll & Oaks Hartline (1986-1992)

BAR ADMISSIONS

- State Bar of Texas (1986)
- U.S. District Court, Northern District of Texas
- U.S. District Court, Southern District of Texas
- U.S. District Court, Western District of Texas

AWARDS

- Board Certified in Civil Trial Law (1994) and Personal Injury Trial Law (1994), Texas Board of Legal Specialization
- Named Austin Lawyer of the Year for Securities Litigation in *The Best Lawyers in America* (2017, 2019)
- Selected for inclusion in *Best Lawyers*® for Securities Litigation (2014-2018)
- Selected by Thomson Reuters for inclusion in *Texas Super Lawyers*® (2003-2004, 2014-2018)
- AV® Preeminent (5.0) Peer Review Rating by Martindale.com (AV® and AV® Preeminent are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies.)

PROFESSIONAL ASSOCIATIONS AND ACTIVITIES

- American Bar Association (Litigation Section), Member
- State Bar of Texas (Litigation Section), Member
- Austin Bar Association, Member
- District 9A Grievance Council, Member (2002-2008)
- American Association for Justice, Member
- American Inns of Court, Barrister
- Participating Attorney, Volunteer Legal Services of Central Texas (1987-present)

PUBLICATIONS & PRESENTATIONS

Books

- Comm. On Pattern Jury Charges, State Bar of Tex., Texas Pattern Jury Charges: Malpractice, Premises, and Products PJC 40.2 (2000)

SIGNIFICANT CASES

Supreme Court of Texas

- *Thompson v. Travelers Indem. Co. of Rhode Island*, 789 S.W.2d 277 (Tex. 1990)

Texas Courts of Appeals

- *Ferneia v. Merrill Lynch Pierce Fenner & Smith, Inc.*, No. 03-09-00566-CV, 2011 WL 276938 (Tex. App.—Austin. July 12, 2011, no pet. h.)
- *John Gannon, Inc. v. Gunnarson Outdoor Adver., Inc.*, No. 03-08-00404-CV, 2010 WL 3192536 (Tex. App.—Austin. August 11, 2010, pet. denied)
- *Texas Energy Innovation, Inc. v. Hino Elec. Power Co., Inc.*, No. 03-07-001-CV, 2010 WL 521033 (Tex. App.—Austin. February 12, 2010, no pet.)
- *Reagan Nat'l Adver. of Austin, Inc. v. Hazen*, No. 03-05-00699-CV, 2008 WL 2938823 (Tex. App.—Austin. July 29, 2008, no pet.)
- *Oram v. State Farm Lloyds*, 977 S.W.2d 163 (Tex. App.—Austin 1998, no pet.)
- *Thompson v. Travelers Indem. Co. of Rhode Island*, 777 S.W.2d 722 (Tex. App.—Austin 1989), aff'd, 789 S.W.2d 277 (Tex. 1990)

Federal District Courts

- *Brooks v. Goettl*, No. A-05-CA-642-LY, 2006 WL 3691000 (W.D. Tex. December 12, 2006)

- *Nutraserp, LLC v. TOPC Texas LLC*, No. A-05-CA-523-LY, 2006 WL 3063432 (W.D. Tex. October 27, 2006)
- *Hartford Cas. Ins. Co. v. Pixel Magic Imaging, Inc.*, No. A-04-CV-1093-LY, 2005 WL 2340725 (W.D. Tex. September 6, 2005)

COMMUNITY INVOLVEMENT

- Westlake Hyline Parents Association, Westlake High School
- Texas Appleseed, Volunteer
- Texas Juvenile Diabetes, Sponsor



GEORGE BROTHERS
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Practice Areas Include:

- Commercial and Business Litigation
 - Construction Litigation
 - Fiduciary Litigation
 - Financial Fraud Litigation
 - Oil and Gas Litigation
 - Real Estate Litigation
 - Securities Litigation
- Intellectual Property Litigation
 - Confidentiality Agreement and Noncompete Agreement Litigation
 - Trade Secret Litigation
- Professional Liability Litigation
 - Accounting and Auditing Malpractice
 - Architect and Engineering Errors and Omissions
 - Legal Malpractice

Doug Brothers has more than 30 years of experience in a wide variety of complex litigation matters, representing both plaintiffs and defendants in trials, appeals, and arbitrations.

He has obtained and collected numerous large awards and settlements in a wide range of matters spanning the practice areas listed above.

On the defense side, Doug has successfully represented on an ongoing basis a high-rise design-builder, real estate developers, banks, and insurers.

Doug has been recognized for his accomplishments by numerous organizations. He has been selected for inclusion in *Texas Super Lawyers*® since 2003, and was named to the Top 50 Lawyers in Central/West Texas in 2016 and 2017. Doug was recognized by *The Best Lawyers in America*® for Bet-the-Company Litigation, Commercial Litigation, and Legal Malpractice Law since 2008, and named Austin's Lawyer of the Year for Bet-the-Company Litigation in *The Best Lawyers in America*® for 2016. Doug was also named *Best of the Bar* for Civil Litigators by the *Austin Business Journal* in 2003.



EDUCATION

- Artium Baccalaureatus, magna cum laude, Amherst College (1978)
- Juris Doctor, with honors, University of Texas School of Law (1981)

PROFESSIONAL EXPERIENCE

- Partner, George Brothers Kincaid & Horton, LLP (2012-present)
- Partner, George & Brothers, LLP (2004-2012)
- Partner, Brothers & Thomas, LLP (formerly Brothers, Reavis & McGinnis) (1984-2004)
- Partner, Leonard, Hurt (Austin) (1984)
- Partner, Leonard, Hurt (Dallas) (1981-1983)

BAR ADMISSIONS

- State Bar of Texas (1981)
- United States Court of Appeals for the Fifth Circuit
- U.S. District Court, Northern District of Texas
- U.S. District Court, Eastern District of Texas
- U.S. District Court, Southern District of Texas
- U.S. District Court, Western District of Texas

AWARDS

- Board Certified in Civil Trial Law (1988), Texas Board of Legal Specialization
- Selected as a Top 50 Lawyer in Central/West Texas by Texas Super Lawyers (2016-2017)
- Selected for inclusion in Texas Super Lawyers (2003-2018)
- Named Austin Lawyer of the Year for Bet-the-Company Litigation in The Best Lawyers in America (2016)
- Selected for inclusion in Best Lawyers® for Bet-the-Company Litigation, Commercial Litigation, and Legal Malpractice law (2008-2019)
- Selected for inclusion in Best of the Bar in Austin Business Journal for Civil Litigators (September 2003)
- Named in Who's Who in America, 55th Edition
- AV® Preeminent (5.0) Peer Review Rating by Martindale.com (AV® and AV® Preeminent are registered certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies)

PROFESSIONAL ASSOCIATIONS AND ACTIVITIES

- American College of Trial Lawyers, Fellow
- American Board of Trial Advocates, Member
- American Association for Justice, Member
- Fellows of the American Bar Foundation, Fellow
- Texas Bar Foundation, Member
- Austin Bar Foundation, Founding Fellow

PUBLICATIONS & PRESENTATIONS

Articles & Papers

- D. Douglas Brothers and John W. Thomas, An Overview of the Texas Whistleblower Act, Suing and Defending Governmental Entities, State Bar of Texas (July 1997)
- D. Douglas Brothers, The Defense of Comparative Bad Faith: A Practitioner's Viewpoint, 72 Texas L. Rev. 1565 (1994)
- D. Douglas Brothers, Suing the State and Its Employees, 16th Annual Page Keeton Products Liability & Personal Injury Conf., University of Texas (November 1992)

Speeches

- Transitioning Your Litigation Practice, Keeton Civil Litigation Conference, University of Texas (2004)
- Liability Insurance in Employment Litigation, Travis County Bar Association, (1998)
- An Overview of the Texas Whistleblower Act, Suing and Defending Governmental Entities, State Bar of Texas (July 1997)
- Factors in Deciding Which Contingency Fee Cases to Take, Employment Law Seminar, University of Houston (1995, 1996)
- The Defense of Comparative Bad Faith, Symposium on the Law of Bad Faith in Contract and Insurance (1994)
- Exemplary Damages after Moriel, 18th Annual Page Keeton Conference, University of Texas (1994)
- Suing the State and Its Employees, 16th Annual Page Keeton Products Liability & Personal Injury Conf., University of Texas (November 1992)

SIGNIFICANT CASES

Supreme Court of Texas

- *Rancho La Valencia, Inc. v. Aquaplex, Inc.*, 383 S.W.3d 150 (Tex. 2012)
- *Americo Life, Inc. v. Myer*, 356 S.W.3d 496 (Tex. 2011)
- *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768 (Tex. 2009)
- *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379 (Tex. 2005)

Texas Courts of Appeals

- *Myer v. Americo Life, Inc.*, 371 S.W.3d 537 (Tex. App.—Dallas 2012, pet. filed)
- *Eco Built Inc. v. Lulfs*, No. 03-08-00427-CV, 2010 WL 3629821 (Tex. App.—Austin Sept. 17, 2010, no pet.)
- *Myer v. Americo Life, Inc.*, 315 S.W.3d 72 (Tex. App.—Dallas 2009), *rev'd*, 356 S.W.3d 496 (Tex. 2011)
- *Landmark Org., L.P. v. Tremco, Inc.*, No. 03-07-00673-CV, 2008 WL 2119341 (Tex. App.—Austin April 24, 2008, no pet.) (per curiam)
- *Texas Parks & Wildlife Dept. v. Dearing*, 240 S.W.3d 330 (Tex. App.—Austin 2007, pet. denied)
- *In re Abbott Labs., Inc.*, No. 03-06-00295-CV, 2007 WL 1498782 (Tex. App.—Austin June 21, 2006, no pet.)
- *CTTI Priesmeyer, Inc. v. K & O Ltd. P'ship*, 164 S.W.3d 675 (Tex. App.—Austin 2005, no pet.)
- *In re Cerberus Capital Management, L.P.*, 161 S.W.3d 531 (Tex. App.—Austin 2004, no. pet.)
- *Samuelson v. United Healthcare of Texas, Inc.*, 79 S.W.3d 706 (Tex. App.—Fort Worth 2002, no pet.)

- *State/Operating Contractors ABS Emissions, Inc. v. Operating Contractors/State*, 985 S.W.2d 646 (Tex. App.—Austin 1999, pet. denied)
- *Spiller v. Texas Dept. of Ins.*, 949 S.W.2d 548 (Tex. App.—Austin 1997, pet. denied)
- *Gregg County v. Farrar*, 933 S.W.2d 769 (Tex. App.—Austin 1996, writ denied)
- *City of San Antonio v. Heim*, 932 S.W.2d 287 (Tex. App.—Austin 1996, writ denied)
- *Texas Dept. of Human Servs. v. Green*, 855 S.W.2d 136 (Tex. App.—Austin 1993, writ denied)
- *Associated Telephone Directory Publishers, Inc. v. Five D's Pub Co., Inc.*, 849 S.W.2d 894 (Tex. App.—Austin 1993, no writ)
- *City of Houston v. Savely*, 708 S.W.2d 879 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.)

Fifth Circuit Court of Appeals

- *Hasie v. Office of Comptroller of Currency of U.S.*, 633 F.3d 361 (5th Cir. 2011)
- *United Forming, Inc. v. FaulknerUSA, LP*, 350 Fed. App'x 948 (5th Cir. 2009)
- *Brady Nat'l. Bank v. Gulf Ins. Co.*, 94 Fed. App'x 197 (5th Cir. 2004)
- *Serna v. City of San Antonio*, 244 F.3d 479 (5th Cir. 2001)

Other Circuit Courts of Appeals

- *In re Nat'l Sec. Agency Telecomms. Records Litig.*, 671 F.3d 881 (9th Cir. 2011), cert. denied, 133 S.Ct. 421 (2012)

Federal District Courts

- *In re Nat'l Sec. Agency Telecomms. Records Litig.*, 633 F.Supp.2d 949 (N.D. Ca. 2009), aff'd in part, rev'd in part, 671 F.3d 881 (9th Cir. 2011), cert. denied, 133 S. Ct. 421 (2012)
- *Hasie v. Office of Comptroller of Currency of U.S.*, No. 5:07-CV-208-C-ECF, 2008 WL 4549881, (N.D. Tex. May 9, 2008)
- *State of Texas ex rel. Ven-a-Care of the Florida Keys, Inc. v. Abbott Labs. Inc.*, No. A-05-CA-897-LY, 2005 WL 5430194 (W.D. Tex. Dec. 5, 2005)

Other

- *In re Crescent Resources, LLC*, No. 11-01135-CAG, No. 2012 WL 691876 (Bankr. W.D. Tex. March 2, 2012)